CHAPTER 460. PUBLIC UTILITIES

MICHIGAN PUBLIC SERVICE COMMISSION
Act 3 of 1939

AN ACT to provide for the regulation and control of public and certain private utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—Am. 1978, Act 211, Imd. Eff. June 5, 1978;—Am. 1980, Act 139, Imd. Eff. May 29, 1980;—Am. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 1982, Initiated Law, Eff. Dec. 2, 1982;—Am. 1982, Act 212, Eff. Nov. 22, 1982;—Am. 1989, Act 2, Imd. Eff. Apr. 3, 1989;—Am. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2005, Act 190, Imd. Eff. Nov. 7, 2005.

The People of the State of Michigan enact:

460.1 Public service commission; creation; members, appointment, qualifications, terms, vacancies.

Sec. 1. A commission to be known and designated as the "Michigan public service commission" is hereby created, which shall consist of 3 members, not more than 2 of whom shall be members of the same political party, appointed by the governor with the advice and consent of the senate. Each member shall be a citizen of the United States, and of the state of Michigan, and no member of said commission shall be pecuniarily interested in any public utility or public service subject to the jurisdiction and control of the commission. During his term no member shall serve as an officer or committee member of any political party organization or hold any office or be employed by any other commission, board, department or institution in this state. No commission member shall be retained or employed by any public utility or public service subject to the jurisdiction and control of the commission during the time he is acting as such commissioner, and for 6 months thereafter, and no member of the commission, who is a member of the bar of the state of Michigan, shall practice his profession or act as counselor or attorney in any court of this state during the time he is a member of said commission: Provided, however, This shall not require any commissioner to retire from, or dissolve any partnership, of which he is a member, but said partnership, while he is a member of the commission, shall not engage in public utility practice. Immediately upon the taking effect of this act, the offices of the present members of the Michigan public service commission are hereby abolished, and the members of the Michigan public service commission as herein created shall be appointed by the governor with the advice and consent of the senate, for terms of 6 years each: Provided, That of the members first appointed, 1 shall be appointed for a term of 2 years, 1 for a term of 4 years, and 1 for a term of 6 years. Upon the expiration of said terms successors shall be appointed with like qualifications and in like manner for terms of 6 years each, and until their successors are appointed and qualified. Vacancies shall be filled in the same manner as is provided for appointment in the first instance.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—Am. 1947, Act 337, Imd. Eff. July 3, 1947;—CL 1948, 460.1;—Am. 1951, Act 275, Eff. Sept. 28, 1951.

Transfer of powers: See MCL 16.331.

460.2 Public service commission; oath, chairman, removal, quorum, seal, offices.

Sec. 2. Members of said commission shall qualify by taking and subscribing to the constitutional oath of office, and shall hold office until the appointment and qualification of their successor. The governor shall designate 1 member to serve as chairman of the commission. Any member of the commission may be removed by the governor for misfeasance, malfeasance or nonfeasance in office after hearing. A vacancy in the commission shall not impair the right of the 2 remaining members to exercise all the powers of the

commission. Two members of the commission shall at all times constitute a quorum. The commission shall adopt an official seal, of which all the courts shall take judicial notice and proceedings, orders and decrees may be authenticated thereby. It shall be the duty of the board of state auditors to provide suitable offices, supplies and equipment for said commission in the city of Lansing, the expenses thereof to be audited, allowed and paid in such manner and out of such funds as may be provided by law.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—CL 1948, 460.2;—Am. 1951, Act 228, Eff. Sept. 28, 1951.

460.3 Public service commission; salary and expenses of members; appointment of secretary, deputies, clerks, assistants, inspectors, heads of divisions, and employees; payment of salaries and expenses; employment and compensation of engineers and experts; actual and necessary expenses; duties.

Sec. 3. The salary of the chairman of the commission and of each of the other members and the schedule for reimbursement of expenses shall be established annually by the legislature. The commission may appoint a secretary and the deputies, clerks, assistants, inspectors, heads of divisions, and employees necessary for the proper exercise of the powers and duties of the commission. All salaries and other expenses incurred by the commission shall be paid out of funds appropriated by the legislature. All fees and other moneys received by the commission shall be paid over at the end of each month to the state treasurer, taking a receipt therefor. The commission may employ engineers and experts in public utilities and public service matters and fix their compensation for services, which may be paid out of the appropriation provided by the legislature. The engineers, inspectors, and employees shall be entitled to their actual and necessary expenses incurred in the performance of the work of the commission pursuant to the schedule established by the legislature. Each deputy, clerk, assistant, engineer, inspector, or expert shall perform the duties required by the commission. Each member of the commission shall devote his entire time to the performance of the duties of his office.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—Am. 1947, Act 337, Imd. Eff. July 3, 1947;—CL 1948, 460.3;—Am. 1951, Act 229, Eff. Sept. 28, 1951;—Am. 1957, Act 208, Imd. Eff. June 6, 1957;—Am. 1959, Act 162, Imd. Eff. July 16, 1959;—Am. 1961, Act 74, Eff. Sept. 8, 1961;—Am. 1975, Act 81, Imd. Eff. May 20, 1975.

460.4 Michigan public service commission; rights, privileges, and jurisdiction; meaning of certain references; review of order or decree.

Sec. 4. The Michigan public service commission shall have and exercise all rights, privileges, and the jurisdiction in all respects as has been conferred by law and exercised by the Michigan public utilities commission. Where reference is or has been made in any law to the "commission", the "Michigan public utilities commission", the "Michigan railroad commission", that reference shall be construed to mean the Michigan public service commission except that with respect to railroad, bridge, and tunnel companies, that reference shall be construed to mean the state transportation department. Any order or decree of the Michigan public service commission shall be subject to review in the manner provided for in section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—CL 1948, 460.4;—Am. 1972, Act 300, Imd. Eff. Dec. 19, 1972;—Am. 1987, Act 4, Eff. Apr. 1, 1987;—Am. 1993, Act 355, Imd. Eff. Jan. 14, 1994.

Administrative rules: R 460.851 et seq.; R 460.1451 et seq.; R 460.1951 et seq.; R 460.2101 et seq.; R 460.2212 et seq.; R 460.2501 et seq.; R 460.2601 et seq.; and R 460.3101 et seq. of the Michigan Administrative Code.

460.5 Public service commission; books, records, files.

Sec. 5. All books, records, files, papers, documents, and other property belonging to the Michigan public utilities commission shall be forthwith turned over to the Michigan public service commission and shall be continued as a part of the records, files, and other property of said commission. The Michigan public service commission shall in all respects be considered to be the successor in office of the Michigan public utilities commission in respect to all of the powers or duties now vested in or imposed upon said public utilities commission. Any unexpended balance of moneys in the state treasury and any fees or other moneys now owing to said public utilities commission shall be and the same are hereby transferred and assigned over to the Michigan public service commission hereby created, to be used and disposed of as provided by law.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—CL 1948, 460.5.

460.5a Annual report.

Sec. 5a. The Michigan public service commission shall make an annual report, summarizing the activities of the commission, to the governor and the legislature on or before the first Monday of March of each year. The annual report shall be a summary of commission activities and may include rules, opinions, and orders promulgated or entered by the commission during the calendar year covered by the annual report. The report

shall also contain any other information which the commission considers to be of value.

History: Add. 1989, Act 33, Imd. Eff. May 26, 1989.

460.6 Public service commission; power and jurisdiction; "private, investor-owned wastewater utilities" defined.

Sec. 6. (1) The public service commission is vested with complete power and jurisdiction to regulate all public utilities in the state except a municipally owned utility, the owner of a renewable resource power production facility as provided in section 6d, and except as otherwise restricted by law. The public service commission is vested with the power and jurisdiction to regulate all rates, fares, fees, charges, services, rules, conditions of service, and all other matters pertaining to the formation, operation, or direction of public utilities. The public service commission is further granted the power and jurisdiction to hear and pass upon all matters pertaining to, necessary, or incident to the regulation of public utilities, including electric light and power companies, whether private, corporate, or cooperative; water, telegraph, oil, gas, and pipeline companies; motor carriers; private wastewater treatment facilities; and all public transportation and communication agencies other than railroads and railroad companies.

(2) A private, investor-owned wastewater utility may apply to the commission for rate regulation. If an application is filed under this subsection, the commission is vested with the specific grant of jurisdictional authority to regulate the rates, fares, fees, and charges of private, investor-owned wastewater utilities. As used in this subsection, "private, investor-owned wastewater utilities" means a utility that delivers wastewater treatment services through a sewage system and the physical assets of which are wholly owned by an individual or group of individual shareholders.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—CL 1948, 460.6;—Am. 1952, Act 240, Eff. Sept. 18, 1952;—Am. 1960, Act 44, Imd. Eff. Apr. 19, 1960;—Am. 1967, Act 125, Imd. Eff. June 27, 1967;—Am. 1969, Act 223, Imd. Eff. Aug. 6, 1969;—Am. 1980, Act 50, Imd. Eff. Mar. 25, 1980;—Am. 1992, Act 37, Imd. Eff. Apr. 21, 1992;—Am. 1993, Act 355, Imd. Eff. Jan. 14, 1994;—Am. 2005, Act 190, Imd. Eff. Nov. 7, 2005.

Administrative rules: R 460.11 et seq.; R 460.511 et seq.; R 460.915 et seq.; R 460.1451 et seq.; R 460.1951 et seq.; R 460.2011 et seq.; R 460.2051 et seq.; R 460.2101 et seq.; R 460.2211 et seq.; R 460.2601 et seq.; and R 460.3101 et seq. of the Michigan Administrative Code.

460.6a Gas or electric utility; petition or application to increase rates and charges or to amend rate or rate schedules; notice and hearing; finding and order granting partial and immediate relief; investigation and report; increase in rates based upon changes in cost of fuel or purchased gas; automatic fuel or purchased gas adjustment clause; rules and procedures; adjustment clauses operating without notice and hearing abolished; separate hearing to determine cost of fuel, purchased gas, or purchased power; recovery of cost; “full and complete hearing” and “general rate case” defined; final decision; reports.

Sec. 6a. (1) When a finding or order is sought by a gas or electric utility to increase its rates and charges or to alter, change, or amend any rate or rate schedules, the effect of which will be to increase the cost of services to its customers, notice shall be given within the service area to be affected. The utility shall place in evidence facts relied upon to support the utility's petition or application to increase its rates and charges, or to alter, change, or amend any rate or rate schedules. After first having given notice to the interested parties within the service area to be affected and affording interested parties a reasonable opportunity for a full and complete hearing, the commission, after submission of all proofs by any interested party, may in its discretion and upon written motion by the utility make a finding and enter an order granting partial and immediate relief. A finding or order shall not be authorized or approved ex parte, nor until the commission's technical staff has made an investigation and report. An alteration or amendment in rates or rate schedules applied for by a public utility that will not result in an increase in the cost of service to its customers may be authorized and approved without notice or hearing. There shall be no increase in rates based upon changes in cost of fuel or purchased gas unless notice has been given within the service area to be affected, and there has been an opportunity for a full and complete hearing on the cost of fuel or purchased gas. The rates charged by any utility pursuant to an automatic fuel or purchased gas adjustment clause shall not be altered, changed, or amended unless notice has been given within the service area to be affected, and there has been an opportunity for a full and complete hearing on the cost of the fuel or purchased gas.

(2) The commission shall adopt rules and procedures for the filing, investigation, and hearing of petitions or applications to increase or decrease utility rates and charges as the commission finds necessary or appropriate to enable it to reach a final decision with respect to petitions or applications within a period of 9 months from the filing of the petitions or applications. The commission shall not authorize or approve adjustment clauses that operate without notice and an opportunity for a full and complete hearing, and all such

clauses shall be abolished. The commission may hold a full and complete hearing to determine the cost of fuel, purchased gas, or purchased power separately from a full and complete hearing on general rate case and may be held concurrently with the general rate case. The commission shall authorize a utility to recover the cost of fuel, purchased gas, or purchased power only to the extent that the purchases are reasonable and prudent. As used in this section:

(a) "Full and complete hearing" means a hearing that provides interested parties a reasonable opportunity to present and cross-examine evidence and present arguments relevant to the specific element or elements of the request that are the subject of the hearing.

(b) "General rate case" means a proceeding initiated by a utility in an application filed with the commission that alleges a revenue deficiency and requests an increase in the schedule of rates or charges based on the utility's total cost of providing service.

(3) If a final decision has not been reached upon a petition or application to increase or decrease utility rates within the 9-month period required by subsection (2), the commission shall give priority to the case and shall take such other action as it finds necessary or appropriate to expedite a final decision. If the commission fails to reach a final decision with respect to a petition or application to increase or decrease utility rates within the 9-month period following the filing of the petition or application, the commission, within 15 days after expiration of the 9-month period, shall submit a written report to the governor and to the president of the senate and the speaker of the house of representatives stating the reasons a decision was not reached within the 9-month period and the actions being taken to expedite the decision. The commission shall submit a further report upon reaching a final decision providing full details with respect to the conduct of the case, including the time required for issuance of the commission's decision following the conclusion of hearings.

History: Add. 1952, Act 243, Eff. Sept. 18, 1952;—Am. 1955, Act 172, Imd. Eff. June 13, 1955;—Am. 1972, Act 300, Imd. Eff. Dec. 19, 1972;—Am. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 1982, Initiated Law, Eff. Dec. 2, 1982;—Am. 1982, Act 212, Eff. Nov. 22, 1982;—Am. 1992, Act 37, Imd. Eff. Apr. 21, 1992.

Compiler's note: In In re Proposals D & H (Michigan State Chamber of Commerce v. State of Michigan), 417 Mich 409 (1983), the Michigan Supreme Court held that Proposal H (Act 212 of 1982) prevails in its entirety over Proposal D. The Court declared further that Proposal H was not repealed by the enactment of Act 304 of 1982.

460.6b Gas utility rates based upon cost of purchased natural gas; authority of commission; acceptance of employment with utility by member of legislature.

Sec. 6b. If the rates of any gas utility shall be based, among other considerations, upon the cost of natural gas purchased by said gas utility which is in turn distributed by said gas utility to the public served by it, and the cost for such gas is regulated by the federal energy regulatory commission, the Michigan public service commission shall have the authority set forth in this section. In any proceeding to increase the rates and charges or to alter, change or amend any rate or rate schedule of a gas utility, the Michigan public service commission shall be permitted to and shall receive in evidence the rates, charges, classifications and schedules on file with the federal energy regulatory commission whereby the cost of gas purchased or received by such gas utility is fixed and determined. If, while such proceeding is pending before the Michigan public service commission, a proceeding shall be instituted or be pending before said federal energy regulatory commission, or on appeal therefrom in a court having jurisdiction, with respect to or affecting the cost of gas payable by such gas utility, said Michigan public service commission shall consider as an item of operating expense to said gas utility the cost of gas set forth in said rates, charges, classifications and schedules on file with the federal energy regulatory commission. If the cost of gas payable by said gas utility shall be reduced by the final order of the federal energy regulatory commission or the final decree of the court, if appealed thereto, and the Michigan public service commission shall have entered an order approving rates to said gas utility as aforesaid based upon the cost of gas set forth in the rates, charges, classifications and schedules on file with the federal energy regulatory commission which were later reduced as above set forth, the Michigan public service commission upon its own motion or upon complaint and after notice and hearing may proceed to order refund to the gas utility's customers of any sums refunded to the said gas utility for the period subsequent to the effective date of the Michigan public service commission order approving rates for the gas utility as above set forth. No member of this 81st Legislature shall accept an employment position with any utility in this state within 2 years after vacating his or her legislative office.

History: Add. 1952, Act 272, Imd. Eff. June 16, 1952;—Am. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 1982, Initiated Law, Eff. Dec. 2, 1982;—Am. 1982, Act 212, Eff. Nov. 22, 1982.

Compiler's note: In In re Proposals D & H (Michigan State Chamber of Commerce v. State of Michigan), 417 Mich 409 (1983), the Michigan Supreme Court held that Proposal H (Act 212 of 1982) prevails in its entirety over Proposal D. The Court declared further that Proposal H was not repealed by the enactment of Act 304 of 1982.

460.6c Energy conservation programs, including energy conservation loan programs, for residential customers of electric and gas utilities; approval; costs; conservation devices, services, and materials; cost benefit information; cost of personally installing insulation; rules; public utility as licensed contractor; accepting application for loan or making loan after certain date prohibited.

Sec. 6c. (1) The Michigan public service commission may approve energy conservation programs, including energy conservation loan programs, for residential customers of electric and gas utilities.

(2) The costs of money, bad debt expense, administrative costs, and the cost of residential energy audits associated with an energy conservation program authorized by this section, other than an energy conservation loan program, shall be included only in general utility rates. The cost of money, bad debt expense, and administrative costs associated with an energy conservation loan program shall be included only in residential utility rates. The inclusion of costs in utility rates as provided in this subsection shall not continue after the costs arising from an approved energy conservation program have been recovered.

(3) The conservation programs subject to this section shall provide conservation devices, services, and materials and may include ceiling and wall insulation, flue dampers, caulking, and weather stripping in compliance with state laws and rules. A residential energy audit or preinspection shall be completed by the utility prior to the installation of any device or material or approval of a loan pursuant to this section. A residential customer participating in an energy conservation program shall be provided with cost benefit information regarding those conservation devices, services, and materials as they apply to the customer's residence.

(4) If a residential customer participating in an energy conservation program personally installs insulation in the customer's place of residence, the cost of installation shall not be included as part of the customer's participation in the program.

(5) The Michigan public service commission shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to establish standards for energy conservation loan programs implemented under this section. The rules shall include provisions to insure that the conservation devices and materials installed under the program comply with federal and state product safety guidelines and, unless personally installed by the customer, are contracted out to, and installed by, licensed contractors who meet the requirements of the commission's rules and are chosen by the customer from a list of contractors provided by the utility, and that the contracts are awarded on a competitive basis. A public utility shall not be considered a licensed contractor for purposes of this subsection. This subsection shall not preclude a public utility from participating in the installation of conservation devices as part of a demonstration or testing program under this act.

(6) A utility company maintaining an energy conservation program permitted under this section shall not accept an application for a loan under that program after December 31, 1986. A utility company maintaining an energy conservation program shall not make a loan as a part of that program after June 30, 1987.

History: Add. 1978, Act 211, Imd. Eff. June 5, 1978;—Am. 1983, Act 80, Imd. Eff. June 14, 1983;—Am. 1984, Act 378, Eff. Mar. 29, 1985.

Administrative rules: R 460.2401 et seq. of the Michigan Administrative Code.

460.6d Owner of renewable resource power production facility; exemption from regulation and control of public service commission; definition.

Sec. 6d. (1) Notwithstanding any other provision of this act, the owner of a renewable resource power production facility shall not be subject to the regulation or control of the public service commission, if all of the following conditions are met:

(a) The owner of the renewable resource power production facility, before the construction of the renewable resource power production facility, was not a public utility subject to the jurisdiction of the public service commission.

(b) The ownership of the renewable resource power production facility is ancillary to the financing of the facility.

(2) As used in this act, “renewable resource power production facility” means a facility having a rated power production capacity of 30 megawatts or less which produces electric energy by the use of biomass, waste, wood, hydroelectric, wind, and other renewable resources, or any combination of renewable resources, as the primary energy source.

History: Add. 1980, Act 50, Imd. Eff. Mar. 25, 1980.

460.6e Impact of § 460.6d; review and evaluation; public hearing; notice; report.

Sec. 6e. (1) Three years after the effective date of section 6d, the standing committees of the legislature responsible for energy issues shall undertake a review and evaluation of the impact of section 6d and report to the legislature.

(2) The legislative committees shall hold a public hearing. Notice of the public hearing shall be given to interested parties who shall be given an opportunity to testify. Following the public hearing, the legislative committees shall prepare a report.

(3) The report shall be submitted to the clerk of the house and secretary of the senate and made available to all members of the legislature.

History: Add. 1980, Act 50, Imd. Eff. Mar. 25, 1980.

460.6f Repealed. 1984, Act 49, Imd. Eff. Apr. 12, 1984.

Compiler's note: The repealed section pertained to electric utility rates.

460.6g Definitions; regulation of rates, terms, and conditions of attachments by attaching parties; hearing; authorization; applicable procedures.

Sec. 6g. (1) As used in this section:

(a) "Attaching party" means any person, firm, corporation, partnership, or cooperatively organized association, other than a utility or a municipality, which seeks to construct attachments upon, along, under, or across public ways or private rights of way.

(b) "Attachment" means any wire, cable, facility, or apparatus for the transmission of writing, signs, signals, pictures, sounds, or other forms of intelligence or for the transmission of electricity for light, heat, or power, installed by an attaching party upon any pole or in any duct or conduit owned or controlled, in whole or in part, by 1 or more utilities.

(c) "Commission" means the Michigan public service commission created in section 1.

(d) "Utility" means any public utility subject to the regulation and control of the commission that owns or controls, or shares ownership or control of poles, ducts, or conduits used or useful, in whole or in part, for supporting or enclosing wires, cables, or other facilities or apparatus for the transmission of writing, signs, signals, pictures, sounds, or other forms of intelligence, or for the transmission of electricity for light, heat, or power.

(2) The commission shall regulate the rates, terms, and conditions of attachments by attaching parties. The commission, in regulating the rates, terms, and conditions of attachments by attaching parties, shall not require a hearing when approving the rates, terms, and conditions unless the attaching party or utility petitions the commission for a hearing. The commission shall ensure that the rates, terms, and conditions are just and reasonable and shall consider the interests of the attaching parties' customers as well as the utility and its customers.

(3) An attaching party shall obtain any necessary authorization before occupying public ways or private rights of way with its attachment.

(4) Procedures under this section shall be those applicable to any utility whose rates charged its customers are regulated by the commission, including the right to appeal a final decision of the commission to the courts.

History: Add. 1980, Act 470, Eff. Mar. 31, 1981.

460.6h Incorporation of gas cost recovery clause in rate or rate schedule of gas utility; definitions; order and hearing; filing gas cost recovery plan and 5-year forecast; gas supply and cost review; final or temporary order; incorporating gas cost recovery factors in rates; filing revised gas cost recovery plan; reopening gas supply and cost review; monthly statement of revenues; gas cost reconciliation; commission order; refunds, credits, or additional charges to include interest; apportionment; exemption; setting gas cost recovery factors in general rate case order.

Sec. 6h. (1) As used in this act:

(a) "Commission" or "public service commission" means the Michigan public service commission created in section 1.

(b) "Gas cost recovery clause" means an adjustment clause in the rates or rate schedule of a gas utility which permits the monthly adjustment of rates for gas in order to allow the utility to recover the booked costs of gas sold by the utility if incurred under reasonable and prudent policies and practices.

(c) "Gas cost recovery factor" means that element of the rates to be charged for gas service to reflect gas costs incurred by a gas utility and made pursuant to a gas cost recovery clause incorporated in the rates or rate

schedules of a gas utility.

(d) “General rate case” means a proceeding before the commission in which interested parties are given notice and a reasonable opportunity for a full and complete hearing on a utility's total cost of service and all other lawful elements properly to be considered in determining just and reasonable rates.

(e) “Interested persons” means the attorney general, the technical staff of the commission, any intervenor admitted to 1 of the utility's 2 previous general rate cases, any intervenor admitted to 1 of the utility's 2 previous reconciliation hearings, or any association of utility customers which meets the requirements to intervene in a reconciliation hearing under the rules of practice and procedure of the commission as applicable.

(2) Pursuant to its authority under this act, the public service commission may incorporate a gas cost recovery clause in the rates or rate schedule of a gas utility, but is not required to do so. Any order incorporating a gas cost recovery clause shall be as a result of a hearing solely on the question of the inclusion of the clause in the rates or rate schedule, which hearing shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws, or, pursuant to subsection (17), as a result of a general rate case. Any order incorporating a gas cost recovery clause shall replace and rescind any previous purchased gas adjustment clause incorporated in the rates of the utility upon the effective date of the first gas cost recovery factor authorized for the utility under its gas cost recovery clause.

(3) In order to implement the gas cost recovery clause established pursuant to subsection (2), a utility annually shall file, pursuant to procedures established by the commission, if any, a complete gas cost recovery plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific gas cost recovery factor. The plan shall be filed not less than 3 months before the beginning of the 12-month period covered by the plan. The plan shall describe all major contracts and gas supply arrangements entered into by the utility for obtaining gas during the specified 12-month period. The description of the major contracts and arrangements shall include the price of the gas, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. The plan shall also include the gas utility's evaluation of the reasonableness and prudence of its decisions to obtain gas in the manner described in the plan, in light of the major alternative gas supplies available to the utility, and an explanation of the legal and regulatory actions taken by the utility to minimize the cost of gas purchased by the utility.

(4) In order to implement the gas cost recovery clause established pursuant to subsection (2), a gas utility shall file, contemporaneously with the gas cost recovery plan described in subsection (3), a 5-year forecast of the gas requirements of its customers, its anticipated sources of supply, and projections of gas costs. The forecast shall include a description of all relevant major contracts and gas supply arrangements entered into or contemplated between the gas utility and its suppliers, a description of all major gas supply arrangements which the gas utility knows have been, or expects will be, entered into between the gas utility's principal pipeline suppliers and their major sources of gas, and such other information as the commission may require.

(5) If a utility files a gas cost recovery plan and a 5-year forecast as provided in subsections (3) and (4), the commission shall conduct a proceeding, to be known as a gas supply and cost review, for the purpose of evaluating the reasonableness and prudence of the plan, and establishing the gas cost recovery factors to implement a gas cost recovery clause incorporated in the rates or rate schedule of the gas utility. The gas supply and cost review shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969.

(6) In its final order in a gas supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the gas cost recovery plan filed by the gas utility pursuant to subsection (3), and shall approve, disapprove, or amend the gas cost recovery plan accordingly. In evaluating the decisions underlying the gas cost recovery plan, the commission shall consider the volume, cost, and reliability of the major alternative gas supplies available to the utility; the cost of alternative fuels available to some or all of the utility's customers; the availability of gas in storage; the ability of the utility to reduce or to eliminate any sales to out-of-state customers; whether the utility has taken all appropriate legal and regulatory actions to minimize the cost of purchased gas; and other relevant factors. The commission shall approve, reject, or amend the 12 monthly gas cost recovery factors requested by the utility in its gas cost recovery plan. The factors ordered shall be described in fixed dollar amounts per unit of gas, but may include specific amounts contingent on future events, including proceedings of the federal energy regulatory commission or its successor agency.

(7) In its final order in a gas supply and cost review, the commission shall evaluate the decisions underlying the 5-year forecast filed by a gas utility pursuant to subsection (4). The commission may also

indicate any cost items in the 5-year forecast that on the basis of present evidence, the commission would be unlikely to permit the gas utility to recover from its customers in rates, rate schedules, or gas cost recovery factors established in the future.

(8) The commission, on its own motion or the motion of any party, may make a finding and enter a temporary order granting approval or partial approval of a gas cost recovery plan in a gas supply and cost recovery review, after first having given notice to the parties to the review, and after having afforded to the parties to the review a reasonable opportunity for a full and complete hearing. A temporary order made pursuant to this subsection shall be considered a final order for purposes of judicial review.

(9) If the commission has made a final or temporary order in a gas supply and cost review, the utility may each month incorporate in its rates for the period covered by the order any amounts up to the gas cost recovery factors permitted in that order. If the commission has not made a final or temporary order within 3 months of the submission of a complete gas cost recovery plan, or by the beginning of the period covered in the plan, whichever comes later, or if a temporary order has expired without being extended or replaced, then pending an order which determines the gas cost recovery factors, a gas utility may each month adjust its rates to incorporate all or a part of the gas cost recovery factors requested in its plan. Any amounts collected under the gas cost recovery factors before the commission makes its final order shall be subject to prompt refund with interest to the extent that the total amounts collected exceed the total amounts determined in the commission's final order to be reasonable and prudent for the same period of time.

(10) Not less than 3 months before the beginning of the third quarter of the 12-month period, the utility may file a revised gas cost recovery plan which shall cover the remainder of the 12-month period. Upon receipt of the revised gas cost recovery plan, the commission shall reopen the gas supply and cost review. In addition, the commission may reopen the gas supply and cost review on its own motion or on the showing of good cause by any party if at least 6 months have elapsed since the utility submitted its complete filing and if there are at least 60 days remaining in the 12-month period under consideration. A reopened gas supply and cost review shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, and in accordance with subsections (3), (6), (8), and (9).

(11) Not more than 45 days following the last day of each billing month in which a gas cost recovery factor has been applied to customers' bills, the gas utility shall file with the commission a detailed statement for that month of the revenues recorded pursuant to the gas cost recovery factor and the allowance for cost of gas included in the base rates established in the latest commission order for the gas utility, and the cost of gas sold. The detailed statement shall be in the manner and form prescribed by the commission. The commission shall establish procedures for insuring that the detailed statement is promptly verified and corrected if necessary.

(12) Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a gas utility's gas cost recovery plan, the commission shall commence a proceeding, to be known as a gas cost reconciliation, as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969. Reasonable discovery shall be permitted before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the gas cost reconciliation the commission shall reconcile the revenues recorded pursuant to the gas cost recovery factor and the allowance for cost of gas included in the base rates established in the latest commission order for the gas utility with the amounts actually expensed and included in the cost of gas sold by the gas utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue could not have been considered adequately at a previously conducted gas supply and cost review.

(13) In its order in a gas cost reconciliation, the commission shall require a gas utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to have been actually expensed by the utility for gas sold, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the gas supply and cost review. Such refunds or credits shall be apportioned among the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order refunds or credits in proportion to the excess amounts actually collected from each such customer during the period covered.

(14) In its order in a gas cost reconciliation, the commission shall authorize a gas utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for gas sold, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the gas

supply and cost review. For excess costs incurred through actions contrary to the commission's gas supply and cost review order, the commission shall authorize a utility to recover costs incurred for gas sold in the 12-month period in excess of the amount recovered over the period only if the utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. For excess costs incurred through actions consistent with commission's gas supply and cost review order, the commission shall authorize a utility to recover costs incurred for gas sold in the 12-month period in excess of the amount recovered over the period only if the utility demonstrates that the excess expenses were reasonable and prudent. Such amounts in excess of the amounts actually recovered by the utility for gas sold shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order charges to be made in proportion to the amounts which would have been paid by such customers if the amounts in excess of the amounts actually recovered by the utility for gas sold had been included in the gas cost recovery factors with respect to such customers during the period covered. Charges for such excess amounts shall be spread over a period that the commission determines to be appropriate.

(15) If the commission orders refunds or credits pursuant to subsection (13), or additional charges to customers pursuant to subsection (14), in its final order in a gas cost reconciliation, the refunds, credits, or additional charges shall include interest and shall be apportioned among the utility's customer classes in proportion to their respective usage during the reconciliation period. In determining the interest included in a refund, credit, or additional charge pursuant to this subsection, the commission shall consider, to the extent material and practicable, the time at which the excess recoveries or insufficient recoveries, or both, occurred. The commission shall determine a rate of interest for excess recoveries, refunds, and credits equal to the greater of the average short-term borrowing rate available to the gas utility during the appropriate period, or the authorized rate of return on the common stock of the gas utility during that same period. The commission shall determine a rate of interest for insufficient recoveries and additional charges equal to the average short-term borrowing rate available to the gas utility during the appropriate period.

(16) To avoid undue hardship or unduly burdensome or excessive cost, the commission may exempt a gas utility with fewer than 200,000 customers in the state of Michigan from 1 or more of the procedural provisions of this section or may modify the filing requirements of this section.

(17) Notwithstanding any other provision of this act, the commission may, upon application by a gas utility, set gas cost recovery factors, in a manner otherwise consistent with this act, in an order resulting from a general rate case. Within 120 days following the effective date of this section, for the purpose of setting gas cost recovery factors, the commission shall permit a gas utility to reopen a general rate case in which a final order was issued within 120 days before or after the effective date of this section or to amend an application or reopen the evidentiary record in a pending general rate case. If the commission sets gas cost recovery factors in an order resulting from a general rate case:

(a) The gas cost recovery factors shall cover a future period of 48 months or the number of months which elapse until the commission orders new gas cost recovery factors in a general rate case, whichever is the shorter period.

(b) Annual reconciliation proceedings shall be conducted pursuant to subsection (12) and if an annual reconciliation proceeding shows a recoverable amount pursuant to subsection (14), the commission shall authorize the gas utility to defer the amount and to accumulate interest on the amount pursuant to subsection (15), and in the next order resulting from a general rate case authorize the utility to recover the amount and interest from its customers in the manner provided in subsection (14).

(c) The gas cost recovery factors shall not be subject to revision pursuant to subsection (10).

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982.

460.6i Initial gas cost recovery plan; filing; alteration of rate schedule in accordance with existing purchased gas adjustment clause; charges in excess of base rates; revenues subject to existing reconciliation proceedings; purchased gas revenues subject to annual reconciliation; procedures; adjustment of rates pending approval or disapproval of gas cost recovery clause in final commission order.

Sec. 6i. (1) This section shall govern the initial filing and implementation of a gas cost recovery plan under section 6h(3).

(2) The initial gas cost recovery plan may be for a period of less than 12 months and shall be filed:

(a) By a gas utility with at least 1,000,000 residential customers in the state of Michigan, within 75 days after the effective date of this section.

(b) By a gas utility with more than 500,000 but fewer than 1,000,000 residential customers in the state of Michigan, within 90 days after the effective date of this section.

(c) By all other gas utilities subject to commission rate jurisdiction, within 30 months after the effective date of this section.

(3) Notwithstanding section 6a(3), until the expiration of 3 months plus the remainder of the then current billing month following the last day on which a gas utility is required to file its first gas cost recovery plan pursuant to subsection (2) of this section, the utility may alter its rate schedule in accordance with an existing purchased gas adjustment clause. Thereafter, the utility may make charges in excess of base rates for the cost of gas sold pursuant only to subsections (2) and (4) of this section. After the effective date of this section, any revenues resulting from an existing purchased gas adjustment clause and recorded for an annual reconciliation period ending prior to January 1, 1983 by a gas utility shall be subject to the existing reconciliation proceeding established by the commission for the utility. In this proceeding, the commission shall consider the reasonableness and prudence of expenditures charged pursuant to an existing purchased gas adjustment clause after the effective date of this section. On and after January 1, 1983, all purchased gas revenues received by a gas utility, whether included in base rates or collected pursuant to a purchased gas adjustment clause or a gas cost recovery clause, shall be subject to annual reconciliation with the cost of purchased gas. Such annual reconciliations shall be conducted in accordance with the reconciliation procedures described in section 6h(12) to (17), including the provisions for refunds, additional charges, deferral and recovery, and shall include consideration by the commission of the reasonableness and prudence of expenditures charged pursuant to any purchased gas adjustment clause in existence during the period being reconciled.

(4) Until the commission approves or disapproves a gas cost recovery clause in a final commission order in a contested case required by section 6h(2), a gas utility which had a purchased gas adjustment clause on the effective date of this section and which has applied for a gas cost recovery clause under section 6h may adjust its rates pursuant to section 6h(3) to (17), to include gas cost recovery factors.

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982.

460.6j Incorporation of power supply cost recovery clause in electric rates or rate schedule of utility; definitions; order and hearing; filing power supply cost recovery plan and 5-year forecast; power supply and cost review; final or temporary order; incorporating power supply cost recovery factors in rates; filing revised power supply cost recovery plan; reopening power supply and cost review; monthly statement of revenues; power supply cost reconciliation; commission order; refunds or credits or additional charges to customers; apportionment; interest; exemption; setting power supply cost recovery factors in general rate case order.

Sec. 6j. (1) As used in this act:

(a) "Power supply cost recovery clause" means a clause in the electric rates or rate schedule of a utility which permits the monthly adjustment of rates for power supply to allow the utility to recover the booked costs, including transportation costs, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility incurred under reasonable and prudent policies and practices.

(b) "Power supply cost recovery factor" means that element of the rates to be charged for electric service to reflect power supply costs incurred by an electric utility and made pursuant to a power supply cost recovery clause incorporated in the rates or rate schedule of an electric utility.

(2) Pursuant to its authority under this act, the public service commission may incorporate a power supply cost recovery clause in the electric rates or rate schedule of a utility, but is not required to do so. Any order incorporating a power supply cost recovery clause shall be as a result of a hearing solely on the question of the inclusion of the clause in the rates or rate schedule, which hearing shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws, or, pursuant to subsection (18), as a result of a general rate case. Any order incorporating a power supply cost recovery clause shall replace and rescind any previous fuel cost adjustment clause or purchased and net interchanged power adjustment clause incorporated in the electric rates of the utility upon the effective date of the first power supply cost recovery factor authorized for the utility under its power supply cost recovery clause.

(3) In order to implement the power supply cost recovery clause established pursuant to subsection (2), a utility annually shall file, pursuant to procedures established by the commission, if any, a complete power supply cost recovery plan describing the expected sources of electric power supply and changes in the cost of power supply anticipated over a future 12-month period specified by the commission and requesting for each

of those 12 months a specific power supply cost recovery factor. The plan shall be filed not less than 3 months before the beginning of the 12-month period covered by the plan. The plan shall describe all major contracts and power supply arrangements entered into by the utility for providing power supply during the specified 12-month period. The description of the major contracts and arrangements shall include the price of fuel, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to provide power supply in the manner described in the plan, in light of its existing sources of electrical generation, and an explanation of the actions taken by the utility to minimize the cost of fuel to the utility.

(4) In order to implement the power supply cost recovery clause established pursuant to subsection (2), a utility shall file, contemporaneously with the power supply cost recovery plan required by subsection (3), a 5-year forecast of the power supply requirements of its customers, its anticipated sources of supply, and projections of power supply costs, in light of its existing sources of electrical generation and sources of electrical generation under construction. The forecast shall include a description of all relevant major contracts and power supply arrangements entered into or contemplated by the utility, and such other information as the commission may require.

(5) If a utility files a power supply cost recovery plan and a 5-year forecast as provided in subsections (3) and (4), the commission shall conduct a proceeding, to be known as a power supply and cost review, for the purpose of evaluating the reasonableness and prudence of the power supply cost recovery plan filed by a utility pursuant to subsection (3), and establishing the power supply cost recovery factors to implement a power supply cost recovery clause incorporated in the electric rates or rate schedule of the utility. The power supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969.

(6) In its final order in a power supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the power supply cost recovery plan filed by the utility pursuant to subsection (3), and shall approve, disapprove, or amend the power supply cost recovery plan accordingly. In evaluating the decisions underlying the power supply cost recovery plan, the commission shall consider the cost and availability of the electrical generation available to the utility; the cost of short-term firm purchases available to the utility; the availability of interruptible service; the ability of the utility to reduce or to eliminate any firm sales to out-of-state customers if the utility is not a multi-state utility whose firm sales are subject to other regulatory authority; whether the utility has taken all appropriate actions to minimize the cost of fuel; and other relevant factors. The commission shall approve, reject, or amend the 12 monthly power supply cost recovery factors requested by the utility in its power supply cost recovery plan. The factors shall not reflect items the commission could reasonably anticipate would be disallowed under subsection (13). The factors ordered shall be described in fixed dollar amounts per unit of electricity, but may include specific amounts contingent on future events.

(7) In its final order in a power supply and cost review, the commission shall evaluate the decisions underlying the 5-year forecast filed by a utility pursuant to subsection (4). The commission may also indicate any cost items in the 5-year forecast that, on the basis of present evidence, the commission would be unlikely to permit the utility to recover from its customers in rates, rate schedules, or power supply cost recovery factors established in the future.

(8) The commission, on its own motion or the motion of any party, may make a finding and enter a temporary order granting approval or partial approval of a power supply cost recovery plan in a power supply and cost recovery review, after first having given notice to the parties to the review, and after having afforded to the parties to the review a reasonable opportunity for a full and complete hearing. A temporary order made pursuant to this subsection shall be considered a final order for purposes of judicial review.

(9) If the commission has made a final or temporary order in a power supply and cost review, the utility may each month incorporate in its rates for the period covered by the order any amounts up to the power supply cost recovery factors permitted in that order. If the commission has not made a final or temporary order within 3 months of the submission of a complete power supply cost recovery plan, or by the beginning of the period covered in the plan, whichever comes later, or if a temporary order has expired without being extended or replaced, then pending an order which determines the power supply cost recovery factors, a utility may each month adjust its rates to incorporate all or a part of the power supply cost recovery factors requested in its plan. Any amounts collected under the power supply cost recovery factors before the commission makes its final order shall be subject to prompt refund with interest to the extent that the total amounts collected exceed the total amounts determined in the commission's final order to be reasonable and prudent for the same period of time.

(10) Not less than 3 months before the beginning of the third quarter of the 12-month period, the utility may file a revised power supply cost recovery plan which shall cover the remainder of the 12-month period. Upon receipt of the revised power supply cost recovery plan, the commission shall reopen the power supply and cost review. In addition, the commission may reopen the power supply and cost review on its own motion or on the showing of good cause by any party if at least 6 months have elapsed since the utility submitted its complete filing and if there are at least 60 days remaining in the 12-month period under consideration. A reopened power supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, and in accordance with subsections (3), (6), (8), and (9).

(11) Not more than 45 days following the last day of each billing month in which a power supply cost recovery factor has been applied to customers' bills, the utility shall file with the commission a detailed statement for that month of the revenues recorded pursuant to the power supply cost recovery factor and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility, and the cost of power supply. The detailed statement shall be in the manner and form prescribed by the commission. The commission shall establish procedures for insuring that the detailed statement is promptly verified and corrected if necessary.

(12) Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a utility's power supply cost recovery plan, the commission shall commence a proceeding, to be known as a power supply cost reconciliation, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969. Reasonable discovery shall be permitted before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the power supply cost reconciliation the commission shall reconcile the revenues recorded pursuant to the power supply cost recovery factors and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of power supply by the utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted power supply and cost review.

(13) In its order in a power supply cost reconciliation, the commission shall:

(a) Disallow cost increases resulting from changes in accounting or rate-making expense treatment not previously approved by the commission. The commission may order the utility to pay a penalty not to exceed 25% of the amount improperly collected. Costs incurred by the utility for penalty payments shall not be charged to customers.

(b) Disallow any capacity charges associated with power purchased for periods in excess of 6 months unless the utility has obtained the prior approval of the commission. If the commission has approved capacity charges in a contract with a qualifying facility, as defined by the federal energy regulatory commission pursuant to the public utilities regulatory policies act of 1978, Public Law 95-617, 92 Stat. 3117, the commission shall not disallow the capacity charges for the facility in the power supply cost reconciliation unless the commission has ordered revised capacity charges upon reconsideration pursuant to this subsection. A contract shall be valid and binding in accordance with its terms and capacity charges paid pursuant to such a contract shall be recoverable costs of the utility for rate-making purposes notwithstanding that the order approving such a contract is later vacated, modified, or otherwise held to be invalid in whole or in part if the order approving the contract has not been stayed or suspended by a competent court within 30 days after the date of the order, or within 30 days of the effective date of the 1987 amendatory act that added subsection (19) if the order was issued after September 1, 1986, and before the effective date of the 1987 amendatory act that added subsection (19). The scope and manner of the review of capacity charges for a qualifying facility shall be determined by the commission. Except as to approvals for qualifying facilities granted by the commission prior to June 1, 1987, proceedings before the commission seeking such approvals shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969. The commission, upon its own motion or upon application of any person, may reconsider its approval of capacity charges in a contested case hearing after passage of a period necessary for financing the qualifying facility, provided that:

(*i*) The commission has first issued an order making a finding based on evidence presented in a contested case that there has been a substantial change in circumstances since the commission's initial approval; and

(*ii*) Such a commission finding shall be set forth in a commission order subject to immediate judicial review.

The financing period for a qualifying facility during which previously approved capacity charges shall not

be subject to commission reconsideration shall be 17.5 years, beginning with the date of commercial operation, for all qualifying facilities, except that the minimum financing period before reconsideration of the previously approved capacity charges shall be for the duration of the financing for a qualifying facility which produces electric energy by the use of biomass, waste, wood, hydroelectric, wind, and other renewable resources, or any combination of renewable resources, as the primary energy source.

(c) Disallow net increased costs attributable to a generating plant outage of more than 90 days in duration unless the utility demonstrates by clear and satisfactory evidence that the outage, or any part of the outage, was not caused or prolonged by the utility's negligence or by unreasonable or imprudent management.

(d) Disallow transportation costs attributable to capital investments to develop a utility's capability to transport fuel or relocate fuel at the utility's facilities and disallow unloading and handling expenses incurred after receipt of fuel by the utility.

(e) Disallow the cost of fuel purchased from an affiliated company to the extent that such fuel is more costly than fuel of requisite quality available at or about the same time from other suppliers with whom it would be comparably cost beneficial to deal.

(f) Disallow charges unreasonably or imprudently incurred for fuel not taken.

(g) Disallow additional costs resulting from unreasonably or imprudently renegotiated fuel contracts.

(h) Disallow penalty charges unreasonably or imprudently incurred.

(i) Disallow demurrage charges.

(j) Disallow increases in charges for nuclear fuel disposal unless the utility has received the prior approval of the commission.

(14) In its order in a power supply cost reconciliation, the commission shall require a utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to have been actually expensed by the utility for power supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the power supply and cost review. Such refunds or credits shall be apportioned among the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order refunds or credits in proportion to the excess amounts actually collected from each such customer during the period covered.

(15) In its order in a power supply cost reconciliation, the commission shall authorize a utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for power supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the power supply and cost review. For excess costs incurred through management actions contrary to the commission's power supply and cost review order, the commission shall authorize a utility to recover costs incurred for power supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. For excess costs incurred through management actions consistent with the commission's power supply and cost review order, the commission shall authorize a utility to recover costs incurred for power supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates that the level of such expenses resulted from reasonable and prudent management actions. Such amounts in excess of the amounts actually recovered by the utility for power supply shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order charges to be made in proportion to the amounts which would have been paid by such customers if the amounts in excess of the amounts actually recovered by the utility for cost of power supply had been included in the power supply cost recovery factors with respect to such customers during the period covered. Charges for such excess amounts shall be spread over a period that the commission determines to be appropriate.

(16) If the commission orders refunds or credits pursuant to subsection (14), or additional charges to customers pursuant to subsection (15), in its final order in a power supply cost reconciliation, the refunds, credits, or additional charges shall include interest. In determining the interest included in a refund, credit, or additional charge pursuant to this subsection, the commission shall consider, to the extent material and practicable, the time at which the excess recoveries or insufficient recoveries, or both occurred. The commission shall determine a rate of interest for excess recoveries, refunds, and credits equal to the greater of the average short-term borrowing rate available to the utility during the appropriate period, or the authorized rate of return on the common stock of the utility during that same period. Costs incurred by the utility for

refunds and interest on refunds shall not be charged to customers. The commission shall determine a rate of interest for insufficient recoveries and additional charges equal to the average short-term borrowing rate available to the utility during the appropriate period.

(17) To avoid undue hardship or unduly burdensome or excessive cost, the commission may:

(a) Exempt an electric utility with fewer than 200,000 customers in the state of Michigan from 1 or more of the procedural provisions of this section or may modify the filing requirements of this section.

(b) Exempt an energy utility organized as a cooperative corporation pursuant to sections 98 to 109 of Act No. 327 of the Public Acts of 1931, being sections 450.98 to 450.109 of the Michigan Compiled Laws, from 1 or more of the provisions of this section.

(18) Notwithstanding any other provision of this act, the commission may, upon application by an electric utility, set power supply cost recovery factors, in a manner otherwise consistent with this act, in an order resulting from a general rate case. Within 120 days following the effective date of this section, for the purpose of setting power supply cost recovery factors, the commission shall permit an electric utility to reopen a general rate case in which a final order was issued within 120 days before or after the effective date of this section or to amend an application or reopen the evidentiary record in a pending general rate case. If the commission sets power supply cost recovery factors in an order resulting from a general rate case:

(a) The power supply cost recovery factors shall cover a future period of 48 months or the number of months which elapse until the commission orders new power supply cost recovery factors in a general rate case, whichever is the shorter period.

(b) Annual reconciliation proceedings shall be conducted pursuant to subsection (12) and if an annual reconciliation proceeding shows a recoverable amount pursuant to subsection (15), the commission shall authorize the electric utility to defer the amount and to accumulate interest on the amount pursuant to subsection (16), and in the next order resulting from a general rate case authorize the utility to recover the amount and interest from its customers in the manner provided in subsection (15).

(c) The power supply cost recovery factors shall not be subject to revision pursuant to subsection (10).

(19) Five years after the effective date of the amendatory act that added this subsection, and every 5 years thereafter, the standing committees of the house and senate that deal with public utilities shall review the amendatory act that added this subsection.

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 1987, Act 81, Imd. Eff. June 29, 1987.

460.6k Initial power supply cost recovery plan; filing; alteration of rate schedule in accordance with adjustment clause; charges in excess of base rate; revenues subject to existing reconciliation proceedings; revenues resulting from certain adjustment clauses subject to existing reconciliation proceedings; revenues subject to annual reconciliation; procedures; lag correction provision; adjustment of rates pending approval or disapproval of power supply cost recovery clause.

Sec. 6k. (1) This section shall govern the initial filing and implementation of a power supply cost recovery plan under section 6j(3).

(2) The initial power supply cost recovery plan may be for a period of less than 12 months and shall be filed:

(a) By an electric utility subject to commission rate jurisdiction with at least 200,000 residential customers in the state of Michigan, within 4 months after the effective date of this section.

(b) By all other electric utilities subject to commission rate jurisdiction, within 15 months after the effective date of this section in accordance with the provisions of this act which the commission determines to be appropriate for the individual utility.

(3) Notwithstanding section 6a(3), until the expiration of 3 months plus the remainder of the then current billing month following the last day on which a utility is required to file its first power supply cost recovery plan pursuant to subsection (2) of this section, the utility may alter its rate schedule in accordance with an existing fuel cost adjustment clause or purchased and net interchanged power adjustment clause. Thereafter, the utility may make charges in excess of base rates for the cost of power supply pursuant only to subsections (2) and (4) of this section. After the effective date of this section, any revenues resulting from an existing fuel cost adjustment clause or purchased and net interchanged power adjustment clause and recorded for an annual reconciliation period ending prior to January 1, 1983, by an electric utility shall be subject to the existing reconciliation proceeding established by the commission for the utility. In this proceeding, the commission shall consider the reasonableness and prudence of expenditures charged pursuant to an existing fuel cost adjustment clause or purchased and net interchanged power adjustment clause after the effective date of this section. On and after January 1, 1983, all fuel cost and purchased and net interchanged power revenues

received by an electric utility, whether included in base rates or collected pursuant to a fuel or purchased and net interchanged power adjustment clause or a power supply cost recovery clause, shall be subject to annual reconciliation with the cost of fuel and purchased and net interchanged power. Such annual reconciliations shall be conducted in accordance with the reconciliation procedures described in section 6j(12) to (18), including the provisions for refunds, additional charges, deferral and recovery, and shall include consideration by the commission of the reasonableness and prudence of expenditures charged pursuant to any fuel or purchased and net interchanged power adjustment clause in existence during the period being reconciled. If the utility has a lag correction provision included in its existing adjustment clauses, the commission shall allow any adjustment to rates attributable to such lag correction provision to be implemented for the 3 billing months immediately succeeding the final billing month in which the existing adjustment clauses as operative.

(4) Until the commission approves or disapproves a power supply cost recovery clause in a final commission order in a contested case required by section 6j(2), a utility which had a fuel cost adjustment clause or purchased and net interchanged power adjustment clause on the effective date of this section and which has applied for a power supply cost recovery clause under section 6j may adjust its rates pursuant to section 6j(3) to (18), to include power supply cost recovery factors.

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982.

460.6*l* Insuring equitable representation of interests of energy utility customers; definitions; utility consumer participation board; creation; powers and duties; number and appointment of members; "utility" defined; member requirements; terms; vacancy; removal of member; meetings; quorum; election of chairperson and vice-chairperson; conducting business of board at public meeting; public notice; availability of writings to public; expense reimbursement and remuneration; limits; temporary administrator of fund.

Sec. 6*l*. (1) For purposes of implementing sections 6h, 6i, 6j, and 6k, this section and section 6m shall provide means of insuring equitable representation of the interests of energy utility customers.

(2) As used in this section and section 6m:

(a) "Annual receipts" means the payments received by the fund under section 6m(2)(a) and (b) during a calendar year.

(b) "Board" means the utility consumer participation board created under subsection (3).

(c) "Department" means the department of management and budget.

(d) "Energy cost recovery proceeding" means any proceeding to establish or implement a gas cost recovery clause or a power supply cost recovery clause as provided in sections 6h, 6i, 6j, or 6k, to set gas cost recovery factors pursuant to section 6h(17), or to set power supply cost recovery factors pursuant to section 6j(18).

(e) "Energy utility" means each electric or gas company regulated by the public service commission.

(f) "Fund" means the utility consumer representation fund created in section 6m.

(g) "Household" means a single-family home, duplex, mobile home, seasonal dwelling, farm home, cooperative, condominium, or apartment which has normal household facilities such as a bathroom, individual cooking facilities, and kitchen sink facilities. Household does not include a penal or corrective institution, or a motel, hotel, or other similar structure if used as a transient dwelling.

(h) "Jurisdictional" means subject to rate regulation by the Michigan public service commission.

(i) "Net grant proceeds" means the annual receipts of the fund less the amounts reserved for the attorney general's use and the amounts expended for board expenses and operation.

(j) "Residential energy utility consumer" or "consumer" means a customer of an energy utility who receives utility service for use within an individual household or an improvement reasonably appurtenant to and normally associated with an individual household.

(k) "Residential tariff sales" means those sales by an energy utility which are subject to residential tariffs on file with the commission.

(*l*) "Utility consuming industry" means a person, sole proprietorship, partnership, association, corporation, or other entity which receives utility service ordinarily and primarily for use in connection with the manufacture, sale, or distribution of goods or the provision of services, but does not include a nonprofit organization representing residential utility customers.

(3) The utility consumer participation board is created within the department and shall exercise its powers and duties under this act independently of the department. The procurement and related management functions of the commission shall be performed under the direction and supervision of the department. The board shall consist of 5 members appointed by the governor, 1 of whom shall be chosen from 1 or more lists of qualified persons submitted by the attorney general.

(4) For the purposes of subsection (5) only, “utility” means an electric or gas company located in or outside of this state.

(5) Each member of the board shall meet the following requirements:

(a) Shall be an advocate for the interests of residential utility consumers, as demonstrated by the member's knowledge of and support for consumer interests and concerns in general or specifically related to utility matters.

(b) Shall not be, or shall not have been within the 5 years preceding appointment, a member of a governing body of, or employed in a managerial or professional or consulting capacity by a utility or an association representing utilities; an enterprise or professional practice which received over $1,500.00 in the year preceding the appointment as a supplier of goods or services to a utility or association representing utilities; or an organization representing employees of such a utility, association, enterprise, or professional practice, or an association which represents such an organization.

(c) Shall not have, or shall not have had within 1 year preceding appointment, a financial interest exceeding $1,500.00 in a utility, an association representing utilities, or an enterprise or professional practice which received over $1,500.00 in the year preceding the appointment as a supplier of goods or services to a utility or association representing utilities.

(d) Shall not be an officer or director of an applicant for a grant under section 6m.

(e) Shall not be a member of the immediate family of a person who would be ineligible under subdivisions (a), (b), (c), or (d).

(6) The members of the board shall be appointed for 2-year terms beginning with the first day of a legislative session in an odd-numbered year and ending on the day before the first day of the legislative session in the next odd-numbered year or when the members' successors are appointed, whichever occurs later. The governor shall not appoint a member to the board for a term commencing after the governor's term of office has ended. A vacancy shall be filled in the same manner as the original appointment. If the vacancy is created other than by expiration of a term, the member shall be appointed for the balance of the unexpired term of the member to be succeeded.

(7) The governor shall remove a member of the board if that member is absent for any reason from either 3 consecutive board meetings or more than 50% of the meetings held by the board in a calendar year. However, a person who is removed due to absenteeism is eligible for reappointment to fill a vacancy which occurs in the board membership. The governor also shall remove a member of the board if the member is subsequently determined to be ineligible under subsection (5).

(8) The board shall hold bimonthly meetings and additional meetings as necessary. A quorum consists of 3 members. A majority vote of the members appointed and serving is necessary for a decision. At its first meeting following the appointment of new members, or as soon as possible after the first meeting, the board shall elect biennially from its membership a chairperson and a vice-chairperson.

(9) The board shall not act directly to represent the interests of residential utility consumers except through administration of the fund and grant program under this section.

(10) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(11) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(12) A member of the board may be reimbursed for actual and necessary expenses, including travel expenses to and from each meeting held by the board, incurred in discharging the member's duties under this section and section 6m. In addition to expense reimbursement, a board member may receive remuneration from the board of $100.00 per meeting attended, not to exceed $1,000.00 in a calendar year. These limits shall be adjusted proportionately to an adjustment in the remittance amounts under section 6m(4) to allow for changes in the cost of living.

(13) Until the board certifies that it is operating and ready to perform all duties under this act, the director of the energy administration created by executive directives 1976-2 and 1976-5 shall serve as temporary administrator of the fund and exercise all duties and powers of the board.

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 2000, Act 141, Imd. Eff. June 5, 2000.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Utility Consumer Participation Board from the Department of Management and Budget to the Department of Commerce, but not within the Public Service Commission, see E.R.O. No. 1993-9, compiled at MCL 460.20 of the Michigan Compiled Laws.

460.6m Utility consumer representation fund; creation as special fund; investment and release of money; remittances by energy utility; factor; action for recovery of disputed amount; action on application for energy cost recovery proceedings; conditions; acceptance of gift or grant; payment of operating costs and expenses; net grant proceeds to finance grant program; application; form; consideration; encouraging representation of different consumer interests; criteria; inviting applicants to file jointly and awarding grant to be managed cooperatively; disbursements; notice of availability of fund; use of annual receipts and interest; retention of certain amounts; conditions applicable to grants; reports; reviewing relationship between costs and benefits.

Sec. 6m. (1) The utility consumer representation fund is created as a special fund. The state treasurer shall be the custodian of the fund and shall maintain a separate account of the money in the fund. The money in the fund shall be invested in the bonds, notes, and other evidences of indebtedness issued or insured by the United States government and its agencies, and in prime commercial paper. The state treasurer shall release money from the fund, including interest earned, in the manner and at the time directed by the board.

(2) Except as provided in subsection (6), each energy utility which has applied to the public service commission for the initiation of an energy cost recovery proceeding shall remit to the fund prior to or upon filing its initial application for such a proceeding, and on or before the first anniversary of that application, an amount of money determined by the board in the following manner:

(a) In the case of an energy utility company serving at least 100,000 customers in this state, an amount which bears to $300,000.00, multiplied by a factor as provided in subsection (4), the same proportion as the company's jurisdictional 1981 total operating revenues, as stated in its annual report, bear to the jurisdictional 1981 total operating revenues of all energy utility companies serving at least 100,000 customers in this state. This amount shall be made available by the board for use by the attorney general for the purposes described in subsection (17).

(b) In the case of an energy utility company serving at least 100,000 residential customers in this state, an amount which bears to $300,000.00, multiplied by a factor as provided in subsection (4), the same proportion as the company's jurisdictional 1981 gross revenues from residential tariff sales bear to the jurisdictional 1981 gross revenues from residential tariff sales of all energy utility companies serving at least 100,000 residential customers in this state. This amount shall be used for grants under subsection (11).

(3) Payments made by an energy utility under subsection (2)(a) shall be operating expenses of the utility which the public service commission shall permit the utility to charge to its customers. Payments made by a utility under subsection (2)(b) shall be operating expenses of the utility which the public service commission shall permit the utility to charge to its residential customers.

(4) For purposes of subsection (2), the factor shall be set by the board at a level not to exceed the percentage increase in the index known as the consumer price index for urban wage earners and clerical workers, select areas, all items indexed, for the Detroit standard metropolitan statistical area, compiled by the bureau of labor statistics of the United States department of labor, or any successor agency, which has occurred between January 1981 and January of the year in which the payment is required to be made. In the event that more than 1 such index is compiled, the index yielding the largest payment shall be the maximum allowable factor. The board shall advise utilities of the factor.

(5) On or before the second and succeeding anniversaries of its initial application for an energy cost recovery proceeding, an energy utility shall remit to the board amounts equal to 5/6 of the amounts required under subsection (2).

(6) The remittance requirements of this section shall not apply to an energy utility organized as a cooperative corporation pursuant to sections 98 to 109 of Act No. 327 of the Public Acts of 1931, being sections 450.98 to 450.109 of the Michigan Compiled Laws, and grants from the fund shall not be used to participate in an energy cost recovery proceeding primarily affecting such a utility.

(7) In the event of a dispute between the board and an energy utility about the amount of payment due, the utility shall pay the undisputed amount and, if the utility and the board cannot agree, the board may initiate civil action in the circuit court for Ingham county for recovery of the disputed amount. The commission shall not accept or take action on an application for an energy cost recovery proceeding from an energy utility subject to this section which has not fully paid undisputed remittances required by this section.

(8) The commission shall not accept or take action on an application for an energy cost recovery proceeding from an energy utility subject to this section until 30 days after it has been notified by the board or the director of the energy administration, if section 6*l*(13) is applicable, that the board or the director is ready to process grant applications, will transfer funds payable to the attorney general immediately upon the receipt of such funds, and will within 30 days approve grants and remit funds to qualified grant applicants.

(9) The board may accept a gift or grant from any source to be deposited in the fund if the conditions or purposes of the gift or grant are consistent with this section.

(10) The costs of operation and expenses incurred by the board in performing its duties under this section and section 6l, including remuneration to board members, shall be paid from the fund. A maximum of 5% of the annual receipts of the fund may be budgeted and used to pay expenses other than grants made under subsection (11).

(11) The net grant proceeds shall finance a grant program from which the board may award to an applicant an amount which the board determines shall be used for the purposes set forth in this section.

(12) The board shall create and make available to applicants an application form. Each applicant shall indicate on the application how the applicant meets the eligibility requirements provided for in this section and how the applicant proposes to use a grant from the fund to participate in 1 or more proceedings as authorized in subsection (17) which have been or are expected to be filed. The board shall receive an application requesting a grant from the fund only from a nonprofit organization or a unit of local government in this state. The board shall consider only applications for grants containing proposals which are in keeping with subsections (17) and (18) and which serve the interests of residential utility consumers. For purposes of making grants, the board may consider protection of the environment, energy conservation, the creation of employment and a healthy economy in the state, and the maintenance of adequate energy resources. The board shall not consider an application which primarily benefits the applicant or a service provided or administered by the applicant. The board shall not consider an application from a nonprofit organization if 1 of the organization's principal interests or unifying principles is the welfare of a utility or its investors or employees, or the welfare of 1 or more businesses or industries, other than farms not owned or operated by a corporation, which receive utility service ordinarily and primarily for use in connection with the profit-seeking manufacture, sale, or distribution of goods or services. Mere ownership of securities by a nonprofit organization or its members shall not disqualify an application submitted by that organization.

(13) The board shall encourage the representation of the interests of identifiable types of residential utility consumers whose interests may differ, including various social and economic classes and areas of the state, and if necessary, may make grants to more than 1 applicant whose applications are related to a similar issue to achieve this type of representation. In addition, the board shall consider and balance the following criteria in determining whether to make a grant to an applicant:

(a) Evidence of the applicant's competence, experience, and commitment to advancing the interests of residential utility consumers.

(b) In the case of a nongovernmental applicant, the extent to which the applicant is representative of or has a previous history of advocating the interests of citizens, especially residential utility consumers.

(c) The anticipated effect of the proposal contained in the application on residential utility consumers, including the immediate and long-term impacts of the proposal.

(d) Evidence demonstrating the potential for continuity of effort and the development of expertise in relation to the proposal contained in the application.

(e) The uniqueness or innovativeness of an applicant's position or point of view, and the probability and desirability of that position or point of view prevailing.

(14) As an alternative to choosing between 2 or more applications which have similar proposals, the board may invite 2 or more of the applicants to file jointly and award a grant to be managed cooperatively.

(15) The board shall make disbursements pursuant to a grant in advance of an applicant's proposed actions as set forth in the application if necessary to enable the applicant to initiate, continue, or complete the proposed actions.

(16) Any notice to utility customers and the general public of hearings or other state proceedings in which grants from the fund may be used shall contain a notice of the availability of the fund and the address of the board.

(17) The annual receipts and interest earned, less administrative costs, may be used only for participation in administrative and judicial proceedings under sections 6h, 6i, 6j, and 6k, and in federal administrative and judicial proceedings which directly affect the energy costs paid by Michigan energy utilities. Amounts which have been in the fund more than 12 months may be retained in the fund for future grants, or may be returned to energy utility companies or used to offset their future remittances in proportion to their previous remittances to the fund, as the board determines will best serve the interests of consumers.

(18) The following conditions shall apply to all grants from the fund:

(a) Disbursements from the fund may be used only to advocate the interests of energy utility customers or classes of energy utility customers, and not for representation of merely individual interests.

(b) The board shall attempt to maintain a reasonable relationship between the payments from a particular energy utility and the benefits to consumers of that utility.

(c) The board shall coordinate the funded activities of grant recipients with those of the attorney general to avoid duplication of effort, to promote supplementation of effort, and to maximize the number of hearings and proceedings with intervenor participation.

(19) A recipient of a grant pursuant to subsection (11) may use the grant only for the advancement of the proposed action approved by the board, including, but not limited to, costs of staff, hired consultants and counsel, and research.

(20) A recipient of a grant under subsection (11) shall file a report with the board within 90 days following the end of the year or a shorter period for which the grant is made. The report shall be made in a form prescribed by the board and shall be subject to audit by the board. The report shall include the following information:

(a) An account of all grant expenditures made by the grant recipient. Expenditures shall be reported within the following categories:

(*i*) Employee and contract for services costs.

(*ii*) Costs of materials and supplies.

(*iii*) Filing fees and other costs required to effectively represent residential utility consumers as provided in this section.

(b) Any additional information concerning uses of the grant required by the board.

(21) The attorney general shall file a report with the house and senate committees on appropriations within 90 days following the end of each fiscal year. The report shall include the following information:

(a) An account of all expenditures made by the attorney general of funds received under this section. Expenditures shall be reported within the following categories:

(*i*) Employee and contract for services costs.

(*ii*) Costs of materials and supplies.

(*iii*) Filing fees and other costs required to effectively represent utility consumers as provided in this section.

(b) Any additional information concerning uses of the funds received under this section required by the committees.

(22) On or before July 1 of each calendar year, the board shall submit a detailed report to the legislature regarding the discharge of duties and responsibilities under this section and section 6l during the preceding calendar year.

(23) Three years after the effective date of this section, and at 3-year intervals thereafter, a senate committee chosen by the majority leader of the senate and a house committee chosen by the speaker of the house of representatives shall review the relationship between costs and benefits resulting from this section and sections 6h through 6*l*, and may recommend changes to the legislature.

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982.

460.6n Restructuring of residential electric rates; hearings; revenue impact; purpose and basis of restructured rates; penalizing residential customers prohibited; informing public of conservation advantages; contents of customer's bill; costs; applicability of section.

Sec. 6n. (1) Not later than 4 months after the effective date of this section, the commission shall commence hearings to restructure residential electric rates established pursuant to former section 6f of this act. The restructuring may be independent of any pending case for rate reductions or increases or may be included within any general rate case proceeding. The revenue impact of the restructured rates shall be included and recognized solely within the residential class of customers.

(2) Rates restructured pursuant to this section shall encourage residential energy conservation and shall be based upon cost of service and other relevant factors.

(3) The commission shall ensure that electric utilities do not penalize residential customers for billings which are for more than 31 days of service in any monthly billing period.

(4) The commission shall take steps necessary to inform the public of the advantages of conservation. In addition to requiring the total charges for service to be reflected on a residential customer's bill, the commission shall require electric utilities to print on each residential customer's bill the total amount of electricity used, the rate for each block used by the customer, and the total charge for each block of electrical usage by the customer. All costs incurred by the electric utilities in carrying out the requirements of this subsection shall be included in the cost to serve the residential customer.

(5) This section shall apply only to electric utilities serving more than 200,000 residential customers in this state.

History: Add. 1984, Act 49, Imd. Eff. Apr. 12, 1984.

460.6o Definitions; power purchase agreements for purchase of capacity and energy from resource recovery facilities; rates, charges, terms, and conditions of service; scrap tire; applicability of section; dispute provisions; filing agreement; commencement of contested case proceeding; approval of agreement; energy rate component; capacity rate component; determination of reserve margin, reserve capacity, or other resource capability measurement; annual accounting.

Sec. 6o. (1) As used in this section:

(a) "Resource recovery facility" means a facility that meets all of the following requirements:

(*i*) Has machinery, equipment, and structures installed for the primary purpose of recovering energy through the incineration of qualified solid waste, qualified landfill gas, or scrap tires.

(*ii*) Utilizes at least 80% of its total annual fuel input in the form of qualified solid waste, at least 90% of its total annual fuel input in the form of qualified landfill gas, or 90% of its total annual fuel input in the form of scrap tires, exclusive of fuel used for normal start-up and shutdown.

(*iii*) Is a qualifying facility as defined by the federal energy regulatory commission pursuant to the public utility regulatory policies act of 1978, Public Law 95-617, 92 Stat. 3117.

(b) "Qualified landfill gas" means gas reclaimed from a type II landfill as defined in R 299.4105 of the Michigan administrative code.

(c) "Qualified solid waste" means solid waste that may be lawfully disposed of in a type II landfill as defined in R 299.4105 of the Michigan administrative code, and which is generated within this state.

(d) "Scrap tire", "scrap tire hauler", and "scrap tire processor" mean those terms as they are defined in part 169 (scrap tires) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.16901 to 324.16909 of the Michigan Compiled Laws.

(2) Public utilities with more than 500,000 customers in this state shall enter into power purchase agreements for the purchase of capacity and energy from resource recovery facilities that incinerate qualified landfill gas; that incinerate qualified solid waste, at least 50.1% of which is generated within the service areas of the public utility; or, subject to the provisions of this section, that incinerate scrap tires, under rates, charges, terms, and conditions of service that, for these facilities, may differ from those negotiated, authorized, or prescribed for purchases from qualifying facilities that are not resource recovery facilities. If a resource recovery facility incinerates scrap tires, or any other tires that are obtained from outside the state, or if more than 50.1% of the scrap tires or other tires are obtained outside the public utility service area, the public utility may in partial satisfaction of its obligation under this subsection purchase capacity and energy from the facility but is not obligated by this act to purchase the facility's capacity and energy. A resource recovery facility that incinerates at least 90% of its total annual fuel input in the form of scrap tires shall accept all scrap tires that first became scrap tires in the state and that are delivered to the facility by a scrap tire processor or a scrap tire hauler. The first 6,000,000 of these scrap tires delivered to the resource recovery facility each year shall be charged a rate not greater than an amount equal to $34.50 per ton, increased each calendar quarter beginning July 1, 1990, by an amount equal to the increase in the all items version of the consumer price index for urban wage earners and clerical workers during the prior calendar quarter. Including power purchase agreements executed prior to June 30, 1989, this section does not apply after 120 megawatts of electric resource recovery facility capacity in a utility's service territory have been contracted and entered in commercial operation. Additionally, this section does not apply to more than the first 30 megawatts of scrap tire fueled resource recovery facility capacity in the state that has been contracted and entered in commercial operation. Excluding rate provisions, if 1 or more provisions of a purchase agreement remain in dispute, each party shall submit to the commission all of the purchase agreement provisions of their last best offer and a supporting brief. On each disputed provision, the commission shall within 60 days either select or reject with recommendation the offers submitted by either party.

(3) A power purchase agreement entered into by a public utility for the purchase of capacity and energy from a resource recovery facility shall be filed with the commission and a contested case proceeding shall commence immediately pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. Notwithstanding section 6j, a power purchase agreement shall be considered approved if the commission does not approve or disapprove the agreement within 6 months of the date of the filing of the agreement. Approval pursuant to this subsection constitutes prior approval under section 6j(13)(b).

(4) The energy rate component of all power sales contracts for resource recovery facilities shall be equal to the avoided energy cost of the purchasing utility.

(5) When averaged over the term of the contract, the capacity rate component of all power sales contracts for resource recovery facilities may be equal to but not less than the full avoided cost of the utility as

determined by the commission. In determining the capacity rate, the commission may assume that the utility needs capacity.

(6) Capacity purchased by a utility prior to January 1, 2000 under a power sales contract with a resource recovery facility shall not be considered directly or indirectly in determining the utility's reserve margin, reserve capacity, or other resource capability measurement. To insure compliance with this act, a resource recovery facility that incinerates scrap tires shall provide an annual accounting to the legislature and the commission. The annual accounting shall include the total amount of scrap tires incinerated at the resource recovery facility and the percentage of those scrap tires that prior to incineration were used within this state for their original intended purpose.

History: Add. 1989, Act 2, Imd. Eff. Apr. 3, 1989;—Am. 1990, Act 323, Imd. Eff. Dec. 21, 1990;—Am. 1994, Act 10, Imd. Eff. Feb. 24, 1994;—Am. 1996, Act 75, Imd. Eff. Feb. 26, 1996.

460.6p Rates subject to electric transmission line certification act.

Sec. 6p. The rates of an electric utility are subject to the electric transmission line certification act.

History: Add. 1995, Act 32, Imd. Eff. May 17, 1995.

460.7 Railroad labor unions; representatives; right to participate in hearings.

Sec. 7. Any elected or designated representatives of a recognized labor organization in the railroad industry which has a fiduciary relationship with its members and the health or safety of whose members in the course of their employment is affected by any action or inaction of the public service commission (including any rule, practice or order of said commission) or is affected by the violation of any statute whose enforcement is within the jurisdiction of the public service commission, shall have the right to file complaints or petition and appeal and be heard and participate fully as a party in interest in any hearings or investigations conducted by the public service commission in connection therewith: Provided, That the services rendered by such elected or designated representative shall be part of his regular duties and responsibilities, and he shall receive for such services no special compensation or fee from such organization or any individual member or members thereof, and such representation is limited to matters pertaining to the health or safety of such members in the course of their employment. This provision shall in no way affect representation authorized by Act No. 162 of the Public Acts of 1966.

History: Add. 1967, Act 89, Eff. Nov. 2, 1967.

Former law: See section 7 of Act 3 of 1939, which was repealed by Act 267 of 1945.

460.8 Voluntary associations; hearings; persons entitled to appear; industrial representative.

Sec. 8. Any elected or designated representative of a voluntary association in the industry whose members have an economic interest in any matters covered by Act No. 254 of the Public Acts of 1933, as amended, being sections 475.1 to 479.49 of the Compiled Laws of 1948, shall have the right to appear and be fully heard and fully participate as a party of interest on behalf of his association only in any public hearing conducted by the public service commission relating to matters covered by Act No. 254 of the Public Acts of 1933, as amended, being sections 475.1 to 479.49 of the Compiled Laws of 1948. The same privilege shall be extended to an industrial representative; this section shall not be construed to affect in any way section 7 of this act as added by Act No. 89 of the Public Acts of 1967.

History: Add. 1968, Act 140, Imd. Eff. June 11, 1968.

Former law: See section 8 of Act 3 of 1939, which was repealed by Act 267 of 1945.

460.9 Definitions; customer switched to alternative gas supplier or natural gas utility; prohibitions; standards; rules; violation; remedies and penalties.

Sec. 9. (1) As used in this section:

(a) "Alternative gas supplier" or "supplier" means a person who sells natural gas at unregulated retail rates to customers located in this state, where the gas is delivered to customers by a natural gas utility that has a customer choice program. Retail sales in a customer choice program by an alternative gas supplier do not constitute public utility service.

(b) "Commission" means the Michigan public service commission in the department of consumer and industry services.

(c) "Customer" means an end-user of natural gas.

(d) "Customer choice program" means a program approved by the commission on application by a natural gas utility that allows retail customers to choose an alternative gas supplier.

(e) "Natural gas utility" means an investor-owned business engaged in the sale and distribution of natural gas within this state whose rates are regulated by the commission.

(2) An alternative gas supplier or natural gas utility shall not switch a customer to its gas supply without authorization of the customer. A natural gas utility shall not be found in violation of this subsection or a commission order issued under subsection (3), if the customer's service was switched by the natural gas utility under the applicable terms and conditions of a commission approved gas customer choice program or as the result of the default of an alternative gas supplier.

(3) The commission may issue orders to ensure that an alternative gas supplier or natural gas utility does not switch a customer to another supplier without the customer's written confirmation, confirmation through an independent third party, or other verification procedures subject to commission approval, confirming the customer's intent to make a switch and that the customer has approved the specific details of the switch.

(4) An alternative gas supplier or natural gas utility shall not include or add optional services in a customer's service package without the authorization of the customer.

(5) The commission may issue orders to ensure that an alternative gas supplier or natural gas utility does not include or add optional services in a customer's service package without the customer's written confirmation, confirmation through an independent third party, or other verification procedures approved by the commission confirming the customer's intent to receive the optional services.

(6) An alternative gas supplier or natural gas utility shall not solicit or enter into contracts subject to this section with customers in this state in a misleading, fraudulent, or deceptive manner.

(7) The commission may by order establish minimum standards for the form and content of all disclosures, explanations, or sales information relating to the sale of a natural gas commodity in a customer choice program and disseminated by an alternative gas supplier or natural gas utility to ensure that the disclosures, explanations, and sales information contain accurate and understandable information and enable a customer to make an informed decision relating to the purchase of a natural gas commodity. Any standards established under this subsection shall be developed to do all of the following:

(a) Not be unduly burdensome.

(b) Not unnecessarily delay or inhibit the initiation and development of competition among alternative gas suppliers or natural gas utilities in any market.

(c) Establish different requirements for disclosures, explanations, or sales information relating to different services or similar services to different natural gas supply classes of customers, whenever such different requirements are appropriate to carry out the provisions of this section.

(8) The commission may adopt rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this section.

(9) If after notice and hearing the commission finds a person has violated this section, the commission may order remedies and penalties to protect and make whole another person who has suffered an economic loss as a result of the violation, including, but not limited to, 1 or more of the following:

(a) Order the person to pay a fine for the first offense of not less than $20,000.00 or more than $30,000.00. For a second and any subsequent offense, the commission shall order the person to pay a fine of not less than $30,000.00 or more than $50,000.00. If the commission finds that the second or any of the subsequent offenses were knowingly made in violation of subsection (2) or (4), the commission shall order the person to pay a fine of not more than $70,000.00. Each switch made in violation of subsection (2) or service added in violation of subsection (4) shall be a separate offense under this subdivision.

(b) Order an unauthorized supplier to refund to the customer any amount greater than the customer would have paid to an authorized supplier.

(c) Order a portion between 10% to 50% of the fine assessed under subdivision (a) be paid directly to the customer who suffered the violation of subsection (2) or (4).

(d) Order the person to reimburse an authorized supplier an amount equal to the amount paid by the customer that should have been paid to the authorized supplier.

(e) If the person is licensed under this act, revoke the license if the commission finds a pattern of violations of subsection (2) or (4).

(f) Issue cease and desist orders.

(10) Notwithstanding subsection (9), a fine shall not be imposed for a violation if the person shows that the violation was an unintentional and bona fide error which occurred notwithstanding the maintenance of procedures reasonably adopted to avoid the error.

(11) A natural gas utility shall not be found in violation of this section for switching a customer's supplier or adding optional services to a customer's account if the switch or addition was made pursuant to the request or notice of an alternative gas supplier that is responsible under a customer choice program for obtaining the customer's approval.

History: Add. 2002, Act 634, Imd. Eff. Dec. 23, 2002.

460.9b Alternative gas suppliers; licensing procedure; maintenance of office; capabilities; records; tax remittance.

Sec. 9b. (1) The commission shall issue orders establishing a licensing procedure for all alternative gas suppliers participating in any natural gas customer choice program approved by the commission. An alternative gas supplier shall not do business in this state without first receiving a license under this act.

(2) An alternative gas supplier shall maintain an office within this state.

(3) The commission shall assure that an alternative gas supplier doing business in this state has the necessary financial, managerial, and technical capabilities and require the supplier to maintain records that the commission considers necessary.

(4) The commission shall require an alternative gas supplier to collect and remit to state and local units of government all applicable users, sales, and use taxes if the natural gas utility is not doing so on behalf of the supplier.

History: Add. 2002, Act 634, Imd. Eff. Dec. 23, 2002.

460.9c Customer on active duty in military; shut-off protection.

Sec. 9c. (1) Except as otherwise provided by this section, a provider of electric or gas service shall not discontinue the service to the residence of a qualifying customer who has made a filing under this section.

(2) In addition to protection provided under the Michigan military act, 1967 PA 150, MCL 32.501 to 32.851, a qualifying customer may apply for shut-off protection for electric or gas service by notifying the provider that he or she is in need of assistance because of a reduction in household income as the result of a call to active duty status in the military.

(3) A provider of service may request verification of the call to active duty status from the qualifying customer.

(4) A qualifying customer may receive shut-off protection from the provider of service under this section for up to 90 days. Upon application to the provider, the provider may grant the qualifying customer 1 or more extensions.

(5) A qualifying customer receiving assistance under this section shall notify the provider of the end of the call to active duty status as soon as that status is known.

(6) Unless waived by the provider, the shut-off protection provided under this section does not void or limit the obligation of the qualifying customer to pay for electric or gas services received during the time of assistance.

(7) A provider shall do all of the following:

(a) Establish a repayment plan requiring minimum monthly payments that allows the qualifying customer to pay any past due amounts over a reasonable time period not to exceed 1 year.

(b) Provide a qualifying customer with information regarding any governmental, provider, or other assistance programs.

(c) Provide qualifying customers with access to existing information on ways to minimize or conserve their service usage.

(8) This section does not affect or amend any commission rules or orders pertaining to billing standards. If the terms and conditions under subsection (7)(a) are not followed by the qualifying customer, the provider may follow the procedures in the commission's rules on consumer standards and billing practices for electric and gas residential service.

(9) As used in this section, a “qualifying customer” means all of the following:

(a) A residential household where the income is reduced because the customer of record, or the spouse of the customer of record, is called to full-time active military service by the president of the United States or the governor of this state during a time of declared national or state emergency or war.

(b) Assistance is needed by the residential household to maintain electric and gas service.

(c) The residential household has notified the provider of the need for assistance and, if required, has provided verification of the call to active duty status.

History: Add. 2003, Act 204, Imd. Eff. Nov. 26, 2003.

460.10 §§ 460.10 to 460.10bb; title of sections; purpose; applicability after January 1, 2002.

Sec. 10. (1) Sections 10 through 10bb shall be known and may be cited as the “customer choice and electricity reliability act”.

(2) The purpose of sections 10a through 10bb is to do all of the following:

(a) To ensure that all retail customers in this state of electric power have a choice of electric suppliers.

(b) To allow and encourage the Michigan public service commission to foster competition in this state in the provision of electric supply and maintain regulation of electric supply for customers who continue to

choose supply from incumbent electric utilities.

(c) To encourage the development and construction of merchant plants which will diversify the ownership of electric generation in this state.

(d) To ensure that all persons in this state are afforded safe, reliable electric power at a reasonable rate.

(e) To improve the opportunities for economic development in this state and to promote financially healthy and competitive utilities in this state.

(3) Subsection (2) does not apply after December 31, 2003.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10a Alternative electric suppliers; orders establishing rates, terms, and conditions of service; licensing procedure; switching or billing for services without consent; code of conduct; appliance service program; orders issued before June 5, 2000; self-service power; affiliate wheeling; rights of parties to existing contracts and agreements; true-up adjustment; determination of net stranded costs; securitization charges; rates of returning customers.

Sec. 10a. (1) No later than January 1, 2002, the commission shall issue orders establishing the rates, terms, and conditions of service that allow all retail customers of an electric utility or provider to choose an alternative electric supplier. The orders shall provide for full recovery of a utility's net stranded costs and implementation costs as determined by the commission.

(2) The commission shall issue orders establishing a licensing procedure for all alternative electric suppliers. To ensure adequate service to customers in this state, the commission shall require that an alternative electric supplier maintain an office within this state, shall assure that an alternative electric supplier has the necessary financial, managerial, and technical capabilities, shall require that an alternative electric supplier maintain records which the commission considers necessary, and shall ensure an alternative electric supplier's accessibility to the commission, to consumers, and to electric utilities in this state. The commission also shall require alternative electric suppliers to agree that they will collect and remit to local units of government all applicable users, sales, and use taxes. An alternative electric supplier is not required to obtain any certificate, license, or authorization from the commission other than as required by this act.

(3) The commission shall issue orders to ensure that customers in this state are not switched to another supplier or billed for any services without the customer's consent.

(4) No later than December 2, 2000, the commission shall establish a code of conduct that shall apply to all electric utilities. The code of conduct shall include, but is not limited to, measures to prevent cross-subsidization, information sharing, and preferential treatment, between a utility's regulated and unregulated services, whether those services are provided by the utility or the utility's affiliated entities. The code of conduct established under this subsection shall also be applicable to electric utilities and alternative electric suppliers consistent with section 10, this section, and sections 10b through 10cc.

(5) An electric utility may offer its customers an appliance service program. Except as otherwise provided by this section, the utility shall comply with the code of conduct established by the commission under subsection (4). As used in this section, “appliance service program” or “program” means a subscription program for the repair and servicing of heating and cooling systems or other appliances.

(6) A utility offering a program under subsection (5) shall do all of the following:

(a) Locate within a separate department of the utility or affiliate within the utility's corporate structure the personnel responsible for the day-to-day management of the program.

(b) Maintain separate books and records for the program, access to which shall be made available to the commission upon request.

(c) Not promote or market the program through the use of utility billing inserts, printed messages on the utility's billing materials, or other promotional materials included with customers' utility bills.

(7) All costs directly attributable to an appliance service program allowed under subsection (5) shall be allocated to the program as required by this subsection. The direct and indirect costs of employees, vehicles, equipment, office space, and other facilities used in the appliance service program shall be allocated to the program based upon the amount of use by the program as compared to the total use of the employees, vehicles, equipment, office space, and other facilities. The cost of the program shall include administrative and general expense loading to be determined in the same manner as the utility determines administrative and general expense loading for all of the utility's regulated and unregulated activities. A subsidy by a utility does not exist if costs allocated as required by this subsection do not exceed the revenue of the program.

(8) A utility may include charges for its appliance service program on its monthly billings to its customers if the utility complies with all of the following requirements:

(a) All costs associated with the billing process, including the postage, envelopes, paper, and printing expenses, are allocated as required under subsection (7).

(b) A customer's regulated utility service is not terminated for nonpayment of the appliance service program portion of the bill.

(c) Unless the customer directs otherwise in writing, a partial payment by a customer is applied first to the bill for regulated service.

(9) In marketing its appliance service program to the public, a utility shall do all of the following:

(a) The list of customers receiving regulated service from the utility shall be available to a provider of appliance repair service upon request within 2 business days. The customer list shall be provided in the same electronic format as such information is provided to the appliance service program. A new customer shall be added to the customer list within 1 business day of the date the customer requested to turn on service.

(b) Appropriately allocate costs as required under subsection (7) when personnel employed at a utility's call center provide appliance service program marketing information to a prospective customer.

(c) Prior to enrolling a customer into the program, the utility shall inform the potential customer of all of the following:

(*i*) That appliance service programs may be available from another provider.

(*ii*) That the appliance service program is not regulated by the commission.

(*iii*) That a new customer shall have 10 days after enrollment to cancel his or her appliance service program contract without penalty.

(*iv*) That the customer's regulated rates and conditions of service provided by the utility are not affected by enrollment in the program or by the decision of the customer to use the services of another provider of appliance repair service.

(d) The utility name and logo may be used to market the appliance service program provided that the program is not marketed in conjunction with a regulated service. To the extent that a program utilizes the utility's name and logo in marketing the program, the program shall include language on all material indicating that the program is not regulated by the commission. Costs shall not be allocated to the program for the use of the utility's name or logo.

(10) This section does not prohibit the commission from requiring a utility to include revenues from an appliance service program in establishing base rates. If the commission includes the revenues of an appliance service program in determining a utility's base rates, the commission shall also include all of the costs of the program as determined under this section.

(11) Except as otherwise provided in this section, the code of conduct with respect to an appliance service program shall not require a utility to form a separate affiliate or division to operate an appliance service program, impose further restrictions on the sharing of employees, vehicles, equipment, office space, and other facilities, or require the utility to provide other providers of appliance repair service with access to utility employees, vehicles, equipment, office space, or other facilities.

(12) The orders issued by the commission before June 5, 2000 that allow customers of an electric utility to choose an alternative electric supplier, including orders that determine and authorize recovery of net stranded costs and implementation costs and that confirm any voluntary commitments of electric utilities, are in compliance with this act and enforceable by the commission. An electric utility that has not had voluntary commitments to provide customer choice previously approved by orders of the commission shall file a restructuring plan to allow customers to choose an alternative electric supplier no later than the date ordered by the commission. The plan shall propose a methodology to determine the electric utility's net stranded costs and implementation costs.

(13) This act does not prohibit or limit the right of a person to obtain self-service power and does not impose a transition, implementation, exit fee, or any other similar charge on self-service power. A person using self-service power is not an electric supplier, electric utility, or a person conducting an electric utility business. As used in this subsection, “self-service power” means any of the following:

(a) Electricity generated and consumed at an industrial site or contiguous industrial site or single commercial establishment or single residence without the use of an electric utility's transmission and distribution system.

(b) Electricity generated primarily by the use of by-product fuels, including waste water solids, which electricity is consumed as part of a contiguous facility, with the use of an electric utility's transmission and distribution system, but only if the point or points of receipt of the power within the facility are not greater than 3 miles distant from the point of generation.

(c) A site or facility with load existing on June 5, 2000 that is divided by an inland body of water or by a public highway, road, or street but that otherwise meets this definition meets the contiguous requirement of this subdivision regardless of whether self-service power was being generated on June 5, 2000.

(d) A commercial or industrial facility or single residence that meets the requirements of subdivision (a) or (b) meets this definition whether or not the generation facility is owned by an entity different from the owner of the commercial or industrial site or single residence.

(14) This act does not prohibit or limit the right of a person to engage in affiliate wheeling and does not impose a transition, implementation, exit fee, or any other similar charge on a person engaged in affiliate wheeling. As used in this section:

(a) "Affiliate" means a person or entity that directly, or indirectly through 1 or more intermediates, controls, is controlled by, or is under common control with another specified entity. As used in this subdivision, "control" means, whether through an ownership, beneficial, contractual, or equitable interest, the possession, directly or indirectly, of the power to direct or to cause the direction of the management or policies of a person or entity or the ownership of at least 7% of an entity either directly or indirectly.

(b) "Affiliate wheeling" means a person's use of direct access service where an electric utility delivers electricity generated at a person's industrial site to that person or that person's affiliate at a location, or general aggregated locations, within this state that was either 1 of the following:

(*i*) For at least 90 days during the period from January 1, 1996 to October 1, 1999, supplied by self-service power, but only to the extent of the capacity reserved or load served by self-service power during the period.

(*ii*) Capable of being supplied by a person's cogeneration capacity within this state that has had since January 1, 1996 a rated capacity of 15 megawatts or less, was placed in service before December 31, 1975, and has been in continuous service since that date. A person engaging in affiliate wheeling is not an electric supplier, an electric utility, or conducting an electric utility business when a person engages in affiliate wheeling.

(15) The rights of parties to existing contracts and agreements in effect as of January 1, 2000 between electric utilities and qualifying facilities, including the right to have the charges recovered from the customers of an electric utility, or its successor, shall not be abrogated, increased, or diminished by this act, nor shall the receipt of any proceeds of the securitization bonds by an electric utility be a basis for any regulatory disallowance. Further, any securitization or financing order issued by the commission that relates to a qualifying facility's power purchase contract shall fully consider that qualifying facility's legal and financial interests.

(16) The commission shall, after a contested case proceeding, issue annually an order approving for each electric utility a true-up adjustment to reconcile any overcollections or undercollections of the preceding 12 months to ensure the recovery of all amounts of net stranded costs. The rates for customers remaining with an incumbent electric utility will not be affected by the true-up process under this subsection. The commission shall review the electric utility's stranded cost recovery charges and securitization charges implemented for the preceding 12 months, and adjust the stranded cost recovery charge, by way of supplemental surcharges or credits, to allow the netting of stranded costs.

(17) The commission shall consider the reasonableness and appropriateness of various methods to determine net stranded costs, including, but not limited to, all of the following:

(a) Evaluating the relationship of market value to the net book value of generation assets and purchased power contracts.

(b) Evaluating net stranded costs based on the market price of power in relation to prices assumed by the commission in prior orders.

(c) Any other method the commission considers appropriate.

(18) The true-up adjustment adopted under subsection (16) shall not result in a modification to the securitization charge. The commission shall not adjust or change in any manner securitization charges authorized by the commission in a financing order issued under section 10i as a result of its review and any action taken under subsection (16).

(19) After the time period described in section 10d(2), the rates for retail customers that remain with or leave and later return to the incumbent electric utility shall be determined in the same manner as the rates were determined before the effective date of this section.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2003, Act 214, Imd. Eff. Dec. 2, 2003;—Am. 2004, Act 88, Imd. Eff. Apr. 22, 2004.

Popular name: Customer Choice and Electricity Reliability Act

460.10b Rates, terms, and conditions of new technologies; application to unbundle existing rate schedules; providing reliable and lower cost competitive rates; standby generation

service; identification of retail market prices.

Sec. 10b. (1) The commission shall establish rates, terms, and conditions of electric service that promote and enhance the development of new generation, transmission, and distribution technologies.

(2) No later than 1 year from the effective date of the amendatory act that added this section, each electric utility shall file an application with the commission to unbundle its existing commercial and industrial rate schedules and separately identify and charge for their discrete services. No earlier than 1 year from the effective date of the amendatory act that added this section, the commission may order the electric utility to file an application to unbundle existing residential rate schedules. The commission may allow the unbundled rates to be expressed on residential billings in terms of percentages in order to simplify residential billing. The commission shall allow recovery by electric utilities of all just and reasonable costs incurred by electric utilities to implement and administer the provisions of this subsection.

(3) The orders issued under this act shall include, but are not limited to, the providing of reliable and lower cost competitive rates for all customers in this state.

(4) An electric utility is obligated, with commission oversight, to provide standby generation service for open access load on a best efforts basis until December 31, 2001 or the date established under section 10d(2), whichever is later. The pricing for the electric generation standby service is equal to the retail market price of comparable standby service allowed under subsection (5). An electric utility is not required to interrupt firm off-system sales or firm service customers to provide standby generation service. Until the date established under section 10d(2), standby generation service shall continue to be provided to nonopen access customers under regulated tariffs.

(5) The methodology for identifying the retail market price for electric generation service to be applied under this section shall be determined by the commission based upon market indices commonly relied upon in the electric generation industry, adjusted as appropriate to reflect retail market prices in the relevant market.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10c Determination of noncompliance; order of remedies and penalties; conduct of contested case; violation as unintentional and bona fide error; finding of frivolous complaint.

Sec. 10c. (1) Except for a violation under section 10a(3) and as otherwise provided under this section, upon a complaint or on the commission's own motion, if the commission finds, after notice and hearing, that an electric utility or an alternative electric supplier has not complied with a provision or order issued under sections 10 through 10bb, the commission shall order such remedies and penalties as necessary to make whole a customer or other person who has suffered damages as a result of the violation, including, but not limited to, 1 or more of the following:

(a) Order the electric utility or alternative electric supplier to pay a fine for the first offense of not less than $1,000.00 or more than $20,000.00. For a second offense, the commission shall order the person to pay a fine of not less than $2,000.00 or more than $40,000.00. For a third and any subsequent offense, the commission shall order the person to pay a fine of not less than $5,000.00 or more than $50,000.00.

(b) Order a refund to the customer of any excess charges.

(c) Order any other remedies that would make whole a person harmed, including, but not limited to, payment of reasonable attorney fees.

(d) Revoke the license of the alternative electric supplier if the commission finds a pattern of violations.

(e) Issue cease and desist orders.

(2) Upon a complaint or the commission's own motion, the commission may conduct a contested case to review allegations of a violation under section 10a(3).

(3) If the commission finds that a person has violated section 10a(3), the commission shall order remedies and penalties to protect customers and other persons who have suffered damages as a result of the violation, including, but not limited to, 1 or more of the following:

(a) Order the person to pay a fine for the first offense of not less than $20,000.00 or more than $30,000.00. For a second and any subsequent offense, the commission shall order the person to pay a fine of not less than $30,000.00 or more than $50,000.00. If the commission finds that the second or any of the subsequent offenses were knowingly made in violation of section 10a(3), the commission shall order the person to pay a fine of not more than $70,000.00. Each unauthorized action made in violation of section 10a(3) shall be a separate offense under this subdivision.

(b) Order an unauthorized supplier to refund to the customer any amount greater than the customer would have paid to an authorized supplier.

(c) Order an unauthorized supplier to reimburse an authorized supplier an amount equal to the amount paid by the customer that should have been paid to the authorized supplier.

(d) Order the refund of any amounts paid by the customer for unauthorized services.

(e) Order a portion between 10% to 50% of the fine ordered under subdivision (a) be paid directly to the customer who suffered the violation under section 10a(3).

(f) If the person is licensed under this act, revoke the license if the commission finds a pattern of violations of section 10a(3).

(g) Issue cease and desist orders.

(4) Notwithstanding subsection (3), a fine shall not be imposed for a violation of section 10a(3) if the supplier has otherwise fully complied with section 10a(3) and shows that the violation was an unintentional and bona fide error which occurred notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error include clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgment with respect to a supplier's obligations under section 10a(3) is not a bona fide error. The burden of proving that a violation was an unintentional and bona fide error is on the supplier.

(5) If the commission finds that a party's position in a complaint filed under subsection (2) is frivolous, the commission shall award to the prevailing party their costs, including reasonable attorney fees, against the nonprevailing party and their attorney.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10d Electric utility with 1,000,000 or more retail customers; rates; recovery of costs; utility using securitization financing; compliance with federal rules, regulations, and standards; security recovery factor; protective orders; definitions.

Sec. 10d. (1) Except as otherwise provided under subsection (3) or unless otherwise reduced by the commission under subsection (5), the commission shall establish the residential rates for each electric utility with 1,000,000 or more retail customers in this state as of May 1, 2000 that will result in a 5% rate reduction from the rates that were authorized or in effect on May 1, 2000. Notwithstanding any other provision of law or commission order, rates for each electric utility with 1,000,000 or more retail customers established under this subsection become effective on June 5, 2000 and remain in effect until December 31, 2003 and all other electric retail rates of an electric utility with 1,000,000 or more retail customers authorized or in effect as of May 1, 2000 shall remain in effect until December 31, 2003.

(2) On and after December 31, 2003, rates for an electric utility with 1,000,000 or more retail customers in this state as of May 1, 2000 shall not be increased until the earlier of December 31, 2013 or until the commission determines, after notice and hearing, that the utility meets the market test under section 10f and has completed the transmission expansion provided for in the plan required under section 10v. The rates for commercial or manufacturing customers of an electric utility with 1,000,000 or more retail customers with annual peak demands of less than 15 kilowatts shall not be increased before January 1, 2005. There shall be no cost shifting from customers with capped rates to customers without capped rates as a result of this section. In no event shall residential rates be increased before January 1, 2006 above the rates established under subsection (1).

(3) Subsections (1) and (2) do not apply to rates or charges authorized by the commission under subsection (13).

(4) Beginning January 1, 2004, annual return of and on capital expenditures in excess of depreciation levels incurred during and before the time period described in subsection (2), and expenses incurred as a result of changes in taxes, laws, or other state or federal governmental actions incurred by electric utilities during the period described in subsection (2), shall be accrued and deferred for recovery. After notice and hearing, the commission shall determine the amount of reasonable and prudent costs, if any, to be recovered and the recovery period, which shall not exceed 5 years, and shall not commence until after the expiration of the period described in subsection (2).

(5) If the commission authorizes an electric utility to use securitization financing under section 10i, any savings resulting from securitization shall be used to reduce retail electric rates from those authorized or in effect as of May 1, 2000 as required under subsection (1). A rate reduction under this subsection shall not be less than the 5% required under subsection (1). The financing order may provide that a utility shall only issue securitization bonds in an amount equal to or less than requested by the utility, but the commission shall not preclude the issuance of an amount of securitization bonds sufficient to fund the rate reduction required under subsection (1).

(6) Except for savings assigned to the low-income and energy efficiency fund under subsection (7), securitization savings greater than those used to achieve the 5% rate reduction under subsection (1) shall be allocated by the commission to further rate reductions or to reduce the level of any charges authorized by the commission to recover an electric utility's stranded costs. The commission shall allocate approved securitization, transition, stranded, and other related charges and credits in a manner that does not result in a reallocation of cost responsibility among the different customer classes.

(7) If securitization savings exceed the amount needed to achieve a 5% rate reduction for all customers, then, for a period of 6 years, 100% of the excess savings, up to 2% of the electric utility's commercial and industrial revenues, shall be allocated to the low-income and energy efficiency fund administered by the commission. The commission shall establish standards for the use of the fund to provide shut-off and other protection for low-income customers and to promote energy efficiency by all customer classes. The commission shall issue a report to the legislature and the governor every 2 years regarding the effectiveness of the fund.

(8) Except as provided under subsection (3), until the end of the period described in subsection (2), the commission shall not authorize any fees or charges that will cause the residential rate reduction required under subsection (1) to be less than 5%.

(9) If an electric utility serving less than 1,000,000 retail customers in this state as of May 1, 2000 issues securitization bonds as allowed under this act, it shall have the same rights, duties, and obligations under this section as an electric utility serving 1,000,000 or more retail customers in this state as of May 1, 2000.

(10) The commission shall take the necessary steps to ensure that all electrical power generating facilities in this state comply with all rules, regulations, and standards of the federal environmental protection agency regarding mercury emissions.

(11) A covered utility may apply to the commission to recover enhanced security costs for an electric generating facility through a security recovery factor. If the commission action under subsection (13) is approval of a security recovery factor, the covered utility may recover those enhanced security costs.

(12) The commission shall require that notice of the application filed under subsection (11) be published by the covered utility within 30 days from the date the application was filed. The initial hearing by the commission shall be held within 20 days of the date the notice was published in newspapers of general circulation in the service territory of the covered utility.

(13) The commission may issue an order approving, rejecting, or modifying the security recovery factor. If the commission issues an order approving a security recovery factor, that order shall be issued within 120 days of the initial hearing required under subsection (12). In determining the security recovery factor, the commission shall only include costs that the commission determines are reasonable and prudent and that are jurisdictionally assigned to retail customers of the covered utility in this state. The costs included shall be net of any proceeds that have been or will be received from another source, including, but not limited to, any applicable insurance settlements received by the covered utility or any grants or other emergency relief from federal, state, or local governmental agencies for the purpose of defraying enhanced security costs. In its order, the commission shall designate a period for recovery of enhanced security costs, including a reasonable return on the unamortized balance, over a period not to exceed 5 years. The security recovery factor shall not be less than zero.

(14) Within 60 days of the effective date of the amendatory act that added this subsection, the commission shall by order prescribe the form for the filing of an application for a security recovery factor under subsection (11). If the commission or its designee determines that a filing is incomplete, it shall notify the covered utility within 10 days of the filing.

(15) Records or other information supplied by the covered utility in an application for recovery of security costs under subsection (11) that describe security measures, including, but not limited to, emergency response plans, risk planning documents, threat assessments, domestic preparedness strategies, and other plans for responding to acts of terrorism are not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall be treated as confidential by the commission.

(16) The commission shall issue protective orders as are necessary to protect the information found by the commission to be confidential under this section.

(17) As used in this section:

(a) “Act of terrorism” means a willful and deliberate act that is all of the following:

(*i*) An act that would be a violent felony under the laws of this state, whether or not committed in this state.

(*ii*) An act that the person knows or has reason to know is dangerous to human life.

(*iii*) An act that is intended to intimidate or coerce a civilian population or influence or affect the conduct of government or a unit of government through intimidation or coercion.

(b) “Covered utility” means an electric utility subject to the rate freeze provisions of subsection (1), the rate cap provisions of subsection (2), or the rate provisions of commission orders in case numbers U-11181-R and U-12204.

(c) “Enhanced security costs” means reasonable and prudent costs of new and enhanced security measures incurred before January 1, 2006 for an electric generating facility by a covered utility that are required by federal or state regulatory security requirements issued after September 11, 2001 or determined to be necessary by the commission to provide reasonable security from an act of terrorism. Enhanced security costs include increases in the cost of insurance that are attributable to an increased terror related risk and the costs of maintaining or restoring electric service as the result of an act of terrorism.

(d) “Security recovery factor” means an unbundled charge for all retail customers, except for customers of alternative electric suppliers, to recover enhanced security costs that have been approved by the commission.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2002, Act 609, Imd. Eff. Dec. 20, 2002.

Popular name: Customer Choice and Electricity Reliability Act

460.10e Connection of merchant plants to transmission and distribution systems; finding of prevention or delay; remedies; merchant plant; standards; exception.

Sec. 10e. (1) An electric utility shall take all necessary steps to ensure that merchant plants are connected to the transmission and distribution systems within their operational control. If the commission finds, after notice and hearing, that an electric utility has prevented or unduly delayed the ability of the plant to connect to the facilities of the utility, the commission shall order remedies designed to make whole the merchant plant, including, but not limited to, reasonable attorney fees. The commission may also order fines of not more than $50,000.00 per day that the electric utility is in violation of this subsection.

(2) A merchant plant may sell its capacity to alternative electric suppliers, electric utilities, municipal electric utilities, retail customers, or other persons. A merchant plant making sales to retail customers is an alternative electric supplier and shall obtain a license under section 10a(2).

(3) The commission shall establish standards for the interconnection of merchant plants with the transmission and distribution systems of electric utilities. The standards shall not require an electric utility to interconnect with generating facilities with a capacity of less than 100 kilowatts for parallel operations. The standards shall be consistent with generally accepted industry practices and guidelines and shall be established to ensure the reliability of electric service and the safety of customers, utility employees, and the general public. The merchant plant will be responsible for all costs associated with the interconnection unless the commission has otherwise allocated the costs and provided for cost recovery.

(4) This section does not apply to interconnections or transactions that are subject to the jurisdiction of the federal energy regulatory commission.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10f Generation capacity in excess of utility's retail sales load; determination of total generating capacity; market power mitigation plan; application; approval; requirements of independent brokering trustee; report to governor and legislature.

Sec. 10f. (1) If, After subtracting the average demand for each retail customer under contract that exceeds 15% of the utility's retail load in the relevant market, an electric utility has commercial control over more than 30% of the generating capacity available to serve a relevant market, the utility shall do 1 or more of the following with respect to any generation in excess of that required to serve its firm retail sales load, including a reasonable reserve margin:

(a) Divest a portion of its generating capacity.

(b) Sell generating capacity under a contract with a nonretail purchaser for a term of at least 5 years.

(c) Transfer generating capacity to an independent brokering trustee for a term of at least 5 years in blocks of at least 500 megawatts, 24 hours per day.

(2) The total generating capacity available to serve the relevant market shall be determined by the commission and shall equal the sum of the firm available transmission capability into the relevant market and the aggregate generating capacity located within the relevant market, less 1 or more of the following:

(a) If a municipal utility does not permit its retail customers to select alternative electric suppliers, the generating capacity owned by a municipal utility necessary to serve the retail native load.

(b) Generating capacity dedicated to serving on-site load.

(c) The generating capacity of any multistate electric supplier jurisdictionally assigned to customers of other states.

(3) Within 30 days after a commission determination of the total generating capacity under subsection (2) in a relevant market, an electric utility that exceeds the 30% limit shall file an application with the commission for approval of a market power mitigation plan. The commission shall approve the plan if it is consistent with this act or require modifications to the plan to make it consistent with this act. The utility shall retain the right to determine what specific actions to take to achieve compliance with this section.

(4) An independent brokering trustee shall be completely independent from and have no affiliation with the utility. The terms of any transfer of generating capacity shall ensure that the trustee has complete control over the marketing, pricing, and terms of the transferred capacity for at least 5 years and shall provide appropriate performance incentives to the trustee for marketing the transferred capacity.

(5) Upon application to the commission by the utility, the commission may issue an order approving a change in trustees during the 5-year term upon a showing that a trustee has failed to market the transferred generating capacity in a prudent and experienced manner.

(6) Within 1 year of the effective date of the amendatory act that added this section, the commission shall issue a report to the governor and the legislature that analyzes all aspects relating to market power in the Upper Peninsula of this state. The report shall include, but not be limited to, concentration of generating capacity, control of the transmission system, restrictions on the delivery of power, ability of new suppliers to enter the market, and identification of any market power problems under the existing market power test. Prior to issuing its report, the commission shall receive written comments and hold hearings to solicit public input.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Compiler's note: At the beginning of subsection (1), the word "After" evidently should read "after".

Popular name: Customer Choice and Electricity Reliability Act

460.10g Definitions; school properties.

Sec. 10g. (1) As used in sections 10 through 10bb:

(a) “Alternative electric supplier” means a person selling electric generation service to retail customers in this state. Alternative electric supplier does not include a person who physically delivers electricity directly to retail customers in this state. An alternative electric supplier is not a public utility.

(b) “Commission” means the Michigan public service commission in the department of consumer and industry services.

(c) “Electric utility” means that term as defined in section 2 of the electric transmission line certification act, 1995 PA 30, MCL 460.562.

(d) “Merchant plant” means electric generating equipment and associated facilities with a capacity of more than 100 kilowatts located in this state that are not owned and operated by an electric utility.

(e) “Relevant market” means either the Upper Peninsula or the Lower Peninsula of this state.

(f) “Renewable energy source” means energy generated by solar, wind, geothermal, biomass, including waste-to-energy and landfill gas, or hydroelectric.

(2) A school district aggregating electricity for school properties or an exclusive aggregator for public or private school properties is not an electric utility or a public utility for the purpose of that aggregation.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2001, Act 48, Imd. Eff. July 23, 2001.

Popular name: Customer Choice and Electricity Reliability Act

460.10h Definitions.

Sec. 10h. As used in this act:

(a) “Assignee” means an individual, corporation, or other legally recognized entity to which an interest in securitization property is transferred.

(b) “Commission” means the Michigan public service commission in the department of consumer and industry services.

(c) “Electric utility” means that term as defined in section 2 of the electric transmission line certification act, 1995 PA 30, MCL 460.562.

(d) “Financing order” means an order of the commission approving the issuance of securitization bonds and the creation of securitization charges and any corresponding utility rate reductions.

(e) “Financing party” means a holder of securitization bonds, including trustees, collateral agents, and other persons acting for the benefit of the holder.

(f) “Nonbypassable charge” means a charge in a financing order payable by a customer to an electric utility or its assignees or successors regardless of the identity of the customer's electric generation supplier.

(g) “Qualified costs” means an electric utility's regulatory assets as determined by the commission, adjusted by the applicable portion of related investment tax credits, plus any costs that the commission determines that the electric utility would be unlikely to collect in a competitive market, including, but not

limited to, retail open access implementation costs and the costs of a commission approved restructuring, buyout or buy-down of a power purchase contract, together with the costs of issuing, supporting, and servicing securitization bonds and any costs of retiring and refunding the electric utility's existing debt and equity securities in connection with the issuance of securitization bonds. Qualified costs include taxes related to the recovery of securitization charges.

(h) "Securitization bonds" means bonds, debentures, notes, certificates of participation, certificates of a beneficial interest, certificates of ownership, or other evidences of indebtedness that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term of not more than 15 years, and that are secured by or payable from securitization property. If certificates of participation, certificates of beneficial interest, or certificates of ownership are issued, references in this act to principal, interest, or premium shall refer to comparable amounts under those certificates.

(i) "Securitization charges" means nonbypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to fully recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in the financing order.

(j) "Securitization property" means the property described in section 10j.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10i Financing order; recovery of qualified costs; conditions; amount; limitation on period for recovery of securitization charges; financing order as effective and irrevocable; evidence of indebtedness; time period to issue or reject; rehearing; appeal; retiring and refunding securitization bonds; retention of financial or legal services by commission.

Sec. 10i. (1) Upon the application of an electric utility, if the commission finds that the net present value of the revenues to be collected under the financing order is less than the amount that would be recovered over the remaining life of the qualified costs using conventional financing methods and that the financing order is consistent with the standards in subsection (2), the commission shall issue a financing order to allow the utility to recover qualified costs.

(2) In a financing order, the commission shall ensure all of the following:

(a) That the proceeds of the securitization bonds are used solely for the purposes of the refinancing or retirement of debt or equity.

(b) That securitization provides tangible and quantifiable benefits to customers of the electric utility.

(c) That the expected structuring and expected pricing of the securitization bonds will result in the lowest securitization charges consistent with market conditions and the terms of the financing order.

(d) That the amount securitized does not exceed the net present value of the revenue requirement over the life of the proposed securitization bonds associated with the qualified costs sought to be securitized.

(3) The financing order shall detail the amount of qualified costs to be recovered and the period over which the securitization charges are to be recovered, not to exceed 15 years.

(4) A financing order is effective in accordance with its terms, and the financing order, together with the securitization charges authorized in the order, shall be irrevocable and not subject to reduction, impairment, or adjustment by further action of the commission, except as provided under section 10k(3).

(5) Stocks, bonds, notes, or other evidence of indebtedness issued under a financing order of the commission shall be binding in accordance with their terms notwithstanding that the order of the commission is later vacated, modified, or otherwise held to be invalid in whole or in part.

(6) The commission shall after an expedited contested case proceeding issue a financing order or an order rejecting the application for a financing order no later than 90 days after the electric utility files its application.

(7) A financing order is only subject to rehearing by the commission on the motion of the applicant for securitization.

(8) Notwithstanding any other provision of law, a financing order may be reviewed by the court of appeals upon a filing by a party to the commission proceeding within 30 days after the financing order is issued. All appeals of a financing order shall be heard and determined as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the commission and briefs to the court and shall be limited to whether the financing order conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this act.

(9) At the request of an electric utility, the commission may adopt a financing order providing for retiring and refunding securitization bonds if the commission finds that the future securitization charges required to

service the new securitization bonds, including transaction costs, will be less than the future securitization charges required to service the securitization bonds being refunded. On the retirement of the refunded securitization bonds, the commission shall adjust the related securitization charges accordingly.

(10) The commission shall have the authority to retain financial or legal services to assist in issuance of a financing order and to require the electric utility to pay the cost of the services. The payments shall be included as qualified costs defined in section 10h(g).

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10j Securitization property; rights and interests.

Sec. 10j. (1) Securitization property shall consist of the rights and interests of an electric utility, or its successor, under a financing order, including without limitation all of the following:

(a) The right to impose, collect, and receive securitization charges authorized in the financing order in an amount necessary to provide the full recovery of all qualified costs.

(b) The right under the financing order to obtain periodic adjustments of securitization charges under section 10k(3).

(c) All revenue, collections, payments, money, and proceeds arising out of the rights and interests described under this subsection.

(2) Securitization property shall constitute a present property right even though the imposition and collection of securitization charges depends on the further acts of the electric utility or others that have not yet occurred. The rights of an electric utility to securitization property before its sale to any assignee shall be considered a property interest in a contract. The financing order shall remain in effect and the securitization property shall continue to exist until the commission approved securitization bonds and expenses related to the bonds have been paid in full.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10k Financing order; effect in connection with bankruptcy.

Sec. 10k. (1) The interest of an assignee or pledgee in securitization property and in the revenues and collections arising from that property are not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person or in connection with the bankruptcy of the electric utility or any other entity. A financing order shall remain in effect and unabated notwithstanding the bankruptcy of the electric utility, its successors, or assignees.

(2) A financing order shall include terms ensuring that the imposition and collection of securitization charges authorized in the order are a nonbypassable charge.

(3) A financing order shall include a mechanism requiring that securitization charges be reviewed and adjusted by the commission at least annually, within 45 days of the anniversary date of the issuance of the securitization bonds, to correct any overcollections or undercollections of the preceding 12 months and to ensure the expected recovery of amounts sufficient to timely provide all payments of debt service and other required amounts and charges in connection with the securitization bonds.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10*l* Agreement to transfer securitization property as true sale.

Sec. 10*l*. (1) An agreement by an electric utility or assignee to transfer securitization property that expressly states that the transfer is a sale or other absolute transfer signifies that the transaction is a true sale and is not a secured transaction and that title, legal and equitable, has passed to the entity to which the securitization property is transferred.

(2) A true sale under this section applies regardless of whether the purchaser has any recourse against the seller, or any other term of the parties' agreement, including the seller's retention of an equity interest in the securitization property, the fact that the electric utility acts as a collector of securitization charges relating to the securitization property, or the treatment of the transfer as a financing for tax, financial reporting, or other purposes.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10m Lien and security interest; creation; changes in order or charges attachment; perfection; priority; sequestration and payment of revenues.

Sec. 10m. (1) A valid and enforceable lien and security interest in securitization property may be created only by a financing order and the execution and delivery of a security agreement with a financing party in connection with the issuance of securitization bonds.

(2) The lien and security interest shall attach automatically from the time that value is received for the bonds and shall be a continuously perfected lien and security interest in the securitization property and all proceeds of the property, whether accrued or not, shall have priority in the order of filing when a financing statement has been filed with respect to the security interest in accordance with the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, and take precedence over any subsequent judicial and other lien creditor. In addition to the rights and remedies provided by this act, all rights and remedies with respect to a security interest provided by the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, shall apply to the securitization property.

(3) Transfer of an interest in securitization property to an assignee shall be perfected against all third parties, including subsequent judicial and other lien creditors, when a financing statement has been filed with respect to the transfer in accordance with the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

(4) The priority of a lien and security interest under this section is not impaired by any later modification of the financing order or by the commingling of funds arising from securitization charges with other funds, and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party. If securitization property has been transferred to an assignee, any proceeds of that property shall be held in trust for the assignee.

(5) In the event of default by the electric utility or its successors, in payment of revenues arising with respect to securitization property, the commission or a court of appropriate jurisdiction, upon the application of the financing party, and without limiting any other remedies available to the financing party, shall order the sequestration and payment to the financing party of revenues arising with respect to the securitization property. An order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the property.

(6) Securitization property shall constitute an account as that term is defined under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

(7) For purposes of this act and the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, securitization property shall be in existence whether or not the revenue or proceeds in respect to the property have accrued and whether or not the value of the property right is dependent on the customers of an electric utility receiving service.

(8) Changes in the financing order or in the customer's securitization charges do not affect the validity, perfection, or priority of the security interest in the securitization property.

(9) The description of securitization property in a security agreement or other agreement or a financing statement is sufficient if it refers to this act and the financing order establishing the securitization property.

(10) This act shall control in any conflict between this act and any other law of this state regarding the attachment and perfection and the effect of perfection and priority of any security interest in securitization property.

(11) Notwithstanding the provisions of the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, the law of the state of Michigan shall govern the perfection and the effect of perfection and priority of any security interest in the securizitation property.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10n Securitization bonds; state pledge of certain conduct.

Sec. 10n. (1) Securitization bonds are not a debt or obligation of the state and are not a charge on its full faith and credit or taxing power.

(2) The state pledges, for the benefit and protection of the financing parties and the electric utility, that it will not take or permit any action that would impair the value of securitization property, reduce or alter, except as allowed under section 10k(3), or impair the securitization charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related securitization bonds have been paid and performed in full. Any party issuing securitization bonds is authorized to include this pledge in any documentation relating to those bonds.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10o Securitization bond; direct interest in acquisition, ownership, and disposition not used in determining tax; obligations of electric utility successor; assignee or financing party as public utility.

Sec. 10o. (1) The acquisition, ownership, and disposition of any direct interest in any securitization bond shall not be taken into account in determining whether a person is subject to any income tax, single business tax, franchise tax, business activities tax, intangible property tax, excise tax, stamp tax, or any other tax imposed by this state or any agency or political subdivision of this state.

(2) Any successor to an electric utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger or acquisition, sale or transfer, by operation of law, as a result of electric utility restructuring or otherwise, shall perform and satisfy all obligations of the electric utility under the amendatory act that added this section in the same manner and to the same extent as the electric utility, including, but not limited to, collecting and paying to the person entitled to revenues with respect to the securitization property.

(3) An assignee or financing party shall not be considered to be a public utility or person providing electric service solely by virtue of the transactions described in this act.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10p Establishment of industry worker transition program; adoption of service quality and reliability standards; compliance report; analysis of data; incentives and penalties.

Sec. 10p. (1) Each electric utility operating in this state shall establish an industry worker transition program that shall, in consultation with employees or applicable collective bargaining representatives, provide skills upgrades, apprenticeship and training programs, voluntary separation packages consistent with reasonable business practices, and job banks to coordinate and assist placement of employees into comparable employment at no less than the wage rates and substantially equivalent fringe benefits received before the transition.

(2) Stranded costs shall include audited and verified employee-related restructuring costs that are incurred as a result of the amendatory act that added this section or as a result of prior commission restructuring orders, including employee severance costs, employee retraining programs, early retirement programs, outplacement programs, and similar costs and programs, that have been approved and found to be prudently incurred by the commission.

(3) In the event of a sale, purchase, or any other transfer of ownership of 1 or more Michigan divisions or business units, or generating stations or generating units, of an electric utility, to either a third party or a utility subsidiary, the electric utility's contract and agreements with the acquiring entity or persons shall require all of the following for a period of at least 30 months:

(a) That the acquiring entity or persons hire a sufficient number of nonsupervisory employees to safely and reliably operate and maintain the station, division, or unit by making offers of employment to the nonsupervisory workforce of the electric utility's division, business unit, generating station, or generating unit.

(b) That the acquiring entity or persons not employ nonsupervisory employees from outside the electric utility's workforce unless offers of employment have been made to all qualified nonsupervisory employees of the acquired business unit or facility.

(c) That the acquiring entity or persons have a dispute resolution mechanism culminating in a final and binding decision by a neutral third party for resolving employee complaints or disputes over wages, fringe benefits, and working conditions.

(d) That the acquiring entity or persons offer employment at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer of ownership of the division, business unit, generating station, or generating unit. The wage rates and substantially equivalent fringe benefits and terms and conditions of employment shall continue for at least 30 months from the time of the transfer of ownership unless the employees, or where applicable collective bargaining representative, and the new employer mutually agree to different terms and conditions of employment within that 30-month period.

(4) The electric utility shall offer a transition plan to those employees who are not offered jobs by the entity because the entity has a need for fewer workers. If there is litigation concerning the sale, or other transfer of ownership of the electric utility's divisions, business units, generating stations, or generating units, the 30-month period under subsection (3) will begin on the date the acquiring entity or persons take control or management of the divisions, business units, generating stations, or generating units of the electric utility.

(5) The commission shall adopt generally applicable service quality and reliability standards for the transmission and distribution systems of electric utilities and other entities subject to its jurisdiction, including, but not limited to, standards for service outages, distribution facility upgrades, repairs and maintenance, telephone service, billing service, operational reliability, and public and worker safety. In setting service quality and reliability standards, the commission shall consider safety, costs, local geography and weather, applicable codes, national electric industry practices, sound engineering judgment, and experience. The commission shall also include provisions to upgrade the service quality of distribution circuits that historically have experienced significantly below-average performance in relationship to similar distribution circuits.

(6) Annually, each jurisdictional utility or entity shall file its report with the commission detailing actions to be taken to comply with the service quality and reliability standards during the next calendar year and its performance in relation to the service quality and reliability standards during the prior calendar year. The annual reports shall contain that data as required by the commission.

(7) The commission shall analyze the data to determine whether the jurisdictional entities are properly operating and maintaining their systems, assess the impact of deregulation on reliability, and take corrective action if needed.

(8) The commission shall be authorized to levy financial incentives and penalties upon any jurisdictional entity which exceeds or fails to meet the service quality and reliability standards.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10q Alternative electric supplier; license requirements.

Sec. 10q. (1) A person shall not engage in the business of an alternative electric supplier in this state unless the person obtains and maintains a license issued under section 10a.

(2) In addition to any other information required by the commission in connection with a licensing application, the applicant shall be required to do both of the following:

(a) Provide information, including information as to the applicant's safety record and its history of service quality and reliability, as to the applicant's technical ability, as defined under regulations of the commission, to safely and reliably generate or otherwise obtain and deliver electricity and provide any other proposed services.

(b) Demonstrate that the employees of the applicant that will be installing, operating, and maintaining generation or transmission facilities within this state, or any entity with which the applicant has contracted to perform those functions within this state, have the requisite knowledge, skills, and competence to perform those functions in a safe and responsible manner in order to provide safe and reliable service.

(3) The commission shall order the applicant to post a bond or provide a letter of credit or other financial guarantee in a reasonable amount established by the commission of not less than $40,000.00, if the commission finds after an investigation and review that the requirement of a bond would be in the public interest.

(4) Only investor-owned, cooperative, or municipal electric utilities shall own, construct, or operate electric distribution facilities or electric meter equipment used in the distribution of electricity in this state. This subsection does not prohibit a self-service power provider from owning, constructing, or operating electric distribution facilities or electric metering equipment for the sole purpose of providing or utilizing self-service power. This act does not affect the current rights, if any, of a nonutility to construct or operate a private distribution system on private property or private easements. This does not preclude crossing of public rights-of-way.

(5) The commission shall not prohibit an electric utility from metering and billing its customers for services provided by the electric utility.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10r Dissemination of disclosures, explanations, or sales information; establishment of Michigan renewables energy program.

Sec. 10r. (1) The commission shall establish minimum standards for the form and content of all disclosures, explanations, or sales information disseminated by a person selling electric service to ensure that the person provides adequate, accurate, and understandable information about the service that enables a customer to make an informed decision relating to the source and type of electric service purchased. The standards shall be developed to do all of the following:

(a) Not be unduly burdensome.

(b) Not unnecessarily delay or inhibit the initiation and development of competition for electric generation service in any market.

(c) Establish different requirements for disclosures, explanations, or sales information relating to different services or similar services to different classes of customers, whenever such different requirements are appropriate to carry out the purposes of this section.

(2) Before January 1, 2002, the commission shall establish a funding mechanism for electric utilities and alternative electric suppliers to carry out an educational program for customers to do all of the following:

(a) Inform customers of the changes in the provision of electric service, including, but not limited to, the availability of alternative electric suppliers.

(b) Inform customers of the requirements relating to disclosures, explanations, or sales information for alternative electric suppliers.

(c) Provide assistance to customers in understanding and using the information to make reasonably informed choices about which service to purchase and from whom to purchase it.

(3) The commission shall require that, starting January 1, 2002, all electric suppliers disclose in standardized, uniform format on the customer's bill with a bill insert, on customer contracts, or, for cooperatives, periodicals issued by an association of rural electric cooperatives, information about the environmental characteristics of electricity products purchased by the customer, including all of the following:

(a) The average fuel mix, including categories for oil, gas, coal, solar, hydroelectric, wind, biofuel, nuclear, solid waste incineration, biomass, and other fuel sources. If a source fits into the other category, the specific source must be disclosed. A regional average, determined by the commission, may be used only for that portion of the electricity purchased by the customer for which the fuel mix cannot be discerned. For the purposes of this subdivision, “biomass” means dedicated crops grown for energy production and organic waste.

(b) The average emissions, in pounds per megawatt hour, sulfur dioxide, carbon dioxide, and oxides of nitrogen. An emissions default, determined by the commission, may be used if the regional average fuel mix is being disclosed.

(c) The average of the high-level nuclear waste generated in pounds per megawatt hour.

(d) The regional average fuel mix and emissions profile as referenced in subsection (3)(a), (b), and (c).

(4) The information required by subsection (3) shall be provided no more than twice annually, and be based on a rolling annual average. Emissions factors will be based on annual publicly available data by generation source.

(5) All of the information required to be provided under subsection (1) shall also be provided to the commission to be included on the commission's internet site.

(6) The commission shall establish the Michigan renewables energy program. The program shall be designed to inform customers in this state of the availability and value of using renewable energy generation and the potential of reduced pollution. The program shall also be designed to promote the use of existing renewable energy sources and encourage the development of new facilities.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10s Low-income and energy assistance programs; availability of federal funds.

Sec. 10s. The commission shall monitor the extent to which federal funds are available for low-income and energy assistance programs. If there is a reduction in the amount of the federal funds available to residents in this state, the commission shall conduct a hearing to determine the amount of funds available and the need, if any, for supplemental funding. Upon completion of the hearing, the commission shall prepare a report and submit it to the governor and the legislature.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10t Shut off of service; conditions; procedures; definitions.

Sec. 10t. (1) An electric utility or alternative electric supplier shall not shut off service to an eligible customer during the heating season for nonpayment of a delinquent account if the customer is an eligible senior citizen customer or if the customer pays to the utility or supplier a monthly amount equal to 7% of the estimated annual bill for the eligible customer and the eligible customer demonstrates, within 14 days of requesting shutoff protection, that he or she has applied for state or federal heating assistance. If an arrearage exists at the time an eligible customer applies for protection from shutoff of service during the heating season,

the utility or supplier shall permit the customer to pay the arrearage in equal monthly installments between the date of application and the start of the subsequent heating season.

(2) An electric utility or alternative electric supplier may shut off service to an eligible low-income customer who does not pay the monthly amounts required under subsection (1) after giving notice in the manner required by rules. The utility or supplier is not required to offer a settlement agreement to an eligible low-income customer who fails to make the monthly payments required under subsection (1).

(3) If a customer fails to comply with the terms and conditions of this section, an electric utility may shut off service on its own behalf or on behalf of an alternative electric supplier after giving the customer a notice, by personal service or first-class mail, that contains all of the following information:

(a) That the customer has defaulted on the winter protection plan.

(b) The nature of the default.

(c) That unless the customer makes the payments that are past due within 10 days of the date of mailing, the utility or supplier may shut off service.

(d) The date on or after which the utility or supplier may shut off service, unless the customer takes appropriate action.

(e) That the customer has the right to file a complaint disputing the claim of the utility or supplier before the date of the proposed shutoff of service.

(f) That the customer has the right to request a hearing before a hearing officer if the complaint cannot be otherwise resolved and that the customer shall pay to the utility or supplier that portion of the bill that is not in dispute within 3 days of the date that the customer requests a hearing.

(g) That the customer has the right to represent himself or herself, to be represented by an attorney, or to be assisted by any other person of his or her choice in the complaint process.

(h) That the utility or supplier will not shut off service pending the resolution of a complaint that is filed with the utility in accordance with this section.

(i) The telephone number and address of the utility or supplier where the customer may make inquiry, enter into a settlement agreement, or file a complaint.

(j) That the customer should contact a social services agency immediately if the customer believes he or she might be eligible for emergency economic assistance.

(k) That the utility or supplier will postpone shutoff of service if a medical emergency exists at the customer's residence.

(*l*) That the utility or supplier may require a deposit and restoration charge if the supplier shuts off service for nonpayment of a delinquent account.

(4) An electric utility is not required to shut off service under this section to an eligible customer for nonpayment to an alternative electric supplier.

(5) The commission shall establish an educational program to ensure that eligible customers are informed of the requirements and benefits of this section.

(6) As used in this section:

(a) “Eligible customer” means either an eligible low-income customer or an eligible senior citizen customer.

(b) “Eligible low-income customer” means a customer whose household income does not exceed 150% of the poverty level, as published by the United States department of health and human services, or who receives any of the following:

(*i*) Assistance from a state emergency relief program.

(*ii*) Food stamps.

(*iii*) Medicaid.

(c) “Eligible senior citizen customer” means a utility or supplier customer who is 65 years of age or older and who advises the utility of his or her eligibility.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10u Report to governor and legislature.

Sec. 10u. The commission shall file a report with the governor and legislature by February 1 of each year that shall include all of the following:

(a) The status of competition for the supplying of electricity in this state.

(b) Recommendations for legislation, if any.

(c) Actions taken by the commission to implement measures necessary to protect consumers from unfair or deceptive business practices by utilities, alternative electric suppliers, and other market participants.

(d) Information regarding consumer education programs, approved by the commission, to inform consumers of all relevant information regarding the purchase of electricity and related services from alternative electric suppliers.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10v Joint plan to expand available transmission capability.

Sec. 10v. (1) Electric utilities serving more than 100,000 retail customers in this state shall file, by January 1, 2001, a joint plan with the commission detailing measures to permanently expand, within 2 years of the effective date of this section, the available transmission capability by at least 2,000 megawatts over the available transmission capability in place as of January 1, 2000.

(2) The joint plan shall detail all actions including additional facilities required, the proposed schedule for accomplishing the actions, the cost of the actions, and the proposed ratemaking treatment for the costs. The joint plan shall also identify all actions and facilities that are required of other transmission owners, including out-of-state entities, to accommodate the actions described in the joint plan.

(3) The commission may order modifications to the joint plan to make it consistent with this act. If the electric utilities are unable to agree upon a joint plan to meet the requirements of this act, the commission shall conduct a hearing to establish a joint plan. The commission shall authorize recovery from benefitting customers of all reasonable and prudent costs incurred by transmission owners for authorized actions taken and facilities installed to meet the requirements of this section that are not recovered through FERC transmission rates.

(4) If an electric utility or an affiliate that is the owner of the transmission assets is denied cost recovery of the reasonable and prudent costs expended to implement the joint plan, then the electric utility or affiliate shall have no further obligation to implement the joint plan. If an electric utility or its affiliate is subsequently granted cost recovery, then the obligation to implement the original joint plan is required. If cost recovery of the reasonable and prudent costs of implementing the joint plan is denied, an electric utility or its affiliate shall develop a new joint plan as provided under this section.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10w Investor-owned electric utility; FERC approval.

Sec. 10w. (1) Each investor-owned electric utility in this state shall, at the utility's option, either join a FERC approved multistate regional transmission system organization or other FERC approved multistate independent transmission organization or divest its interest in its transmission facilities to an independent transmission owner.

(2) An investor-owned electric utility that is party to a legitimate filing that was pending before the FERC on December 31, 2001 which is seeking FERC approval of a proposed multistate regional transmission system organization shall be considered to be in compliance with this section. Subsection (3) shall apply if FERC rejects a pending filing or if the electric utility withdraws from the filing or from a regional transmission system organization. This section does not provide guidance to FERC with respect to any pending filing.

(3) If an electric utility has not complied with this section by December 31, 2001, the commission shall direct the electric utility to join a FERC approved multistate regional transmission system organization selected by the commission.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10x Cooperative electric utility; requirements.

Sec. 10x. (1) The commission shall not require a cooperative electric utility to provide its retail customers the ability to choose an alternative electric supplier before January 1, 2005, nor unbundle its rates as required under section 10b before July 1, 2004. Any retail customer of a cooperative with a peak load of 1 megawatt or greater shall be provided the opportunity to choose an alternative electric supplier no later than January 1, 2002.

(2) The commission shall not require a cooperative electric utility or an independent investor-owned utility with fewer than 60 employees to maintain separate facilities, operations, or personnel, used to deliver electricity to retail customers, provide retail electric service, or to be an alternative electric supplier.

(3) Any debt service recovery charge, or other charge approved by the commission for a cooperative electric utility serving primarily at wholesale may, upon application by its member cooperative or

cooperatives, be assessed by and collected through its member cooperative or cooperatives.

(4) The commission shall not prohibit a cooperative electric utility from metering and billing its customers for electric services provided by the cooperative electric utility.

(5) A cooperative electric utility shall not be required to provide funding under section 10r(2) until July 1, 2004 or such time as it is providing choice to all of its retail customers, whichever is earlier.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10y Municipally owned utility; requirements.

Sec. 10y. (1) The governing body of a municipally owned utility shall determine whether it will permit retail customers receiving delivery service from the municipally owned utility the opportunity of choosing an alternative electric supplier, subject to the implementation of rates, charges, terms, and conditions referred to in subsection (7).

(2) Except with the written consent of the municipally owned utility, a person shall not provide delivery service or customer account service to a retail customer that was receiving that service from a municipally owned utility as of the effective date of the amendatory act that added this section, or is receiving the service from a municipally owned utility and has the opportunity to choose an alternative electric supplier under terms consistent with this section. For purposes of this subsection, "customer" means the building or facilities served rather than the individual, association, partnership, corporation, governmental body, or any other entity taking service.

(3) After December 31, 2007, subsection (2) does not apply if the governing body of the municipally owned utility does not permit all of its retail customers receiving delivery service from the municipally owned utility located outside of the boundaries of the municipality that owns the utility the opportunity to choose an alternative electric supplier.

(4) If a municipally owned utility elects to provide electric generation service to retail customers receiving delivery service from an electric utility, all of the following apply:

(a) The municipally owned utility shall provide all of its retail customers receiving delivery service from the municipally owned utility located outside of the boundaries of the municipality that owns the utility the opportunity of choosing an alternative electric supplier. The rates, charges, terms, and conditions of delivery service for customers choosing an alternative electric supplier shall be established by the governing body of the municipally owned utility as provided under subsection (7).

(b) If a municipally owned utility and an electric utility both provide delivery service to retail customers in the same municipality located outside of the boundaries of the municipality that owns the municipal utility, then the municipally owned utility shall do 1 of the following:

(*i*) Make a filing as provided under subsection (5).

(*ii*) Enter into a written agreement as provided under subsection (6).

(c) The municipally owned utility shall comply with orders issued pursuant to sections 10a(3), 10q, 10r, and 10t with respect to customers located outside of the municipality that owns the municipally owned utility. Upon a complaint or on the commission's own motion, if the commission finds, after notice and hearing, that the municipally owned utility has not complied with a provision or order issued under sections 10a(3), 10q, 10r, and 10t the commission shall order such remedies and penalties as necessary to make whole a customer or other person who has suffered damages as a result of the violation, including, but not limited to, 1 or more of the following:

(*i*) Order the municipally owned utility to pay a fine of not less than $1,000.00 or more than $20,000.00 for the first offense and not less than $40,000.00 for a second and any subsequent offense.

(*ii*) Order a refund to the customer of any excess charges.

(*iii*) Order any other remedies that would make whole a person harmed, including, but not limited to, payment of reasonable attorney fees.

(*iv*) Revoke the license of the municipally owned utility if the commission finds a pattern of violations.

(*v*) Issue cease and desist orders.

(d) The municipally owned utility may provide electric generation service to serve electric retail customers receiving delivery service from an electric utility up to an amount equal to the municipally owned utility's retail customer load that has the opportunity of choosing from an alternative electric supplier.

(e) The municipally owned utility shall obtain a license under section 10a(2). The commission shall issue a license unless it determines that the municipally owned utility has adopted rates, charges, terms, and conditions for delivery service that are unduly discriminatory or reflect recovery of stranded costs in an amount considered unjust and unreasonable by the commission. A municipally owned utility operating under a license issued by the commission shall notify the commission before modifying rates, charges, terms, and

conditions for delivery services. This subsection does not grant the commission authority to set rates for a municipally owned utility. The commission, after notice and opportunity for hearing, may revoke a license issued to a municipally owned utility if it determines that the municipally owned utility is not in compliance with this subsection.

(5) With respect to any electric utility regarding delivery service to customers located outside of the municipal boundaries of the municipality that owns the utility, a governing body of a municipally owned utility may elect to operate in compliance with R 460.3411 of the Michigan administrative code, as in effect on the effective date of the amendatory act that added this section. However, compliance with R 460.3411(13) of the Michigan administrative code is not required for the municipally owned utility. Concurrent with the filing of an election under this subsection with the commission, the municipally owned utility shall serve a copy of the election on the electric utility. Beginning 30 days after service of the copy of the election, the electric utility shall, as to the electing municipally owned utility, be subject to the terms of R 460.3411 of the Michigan administrative code as in effect on the effective date of the amendatory act that added this section. The commission shall decide disputes arising under this subsection subject to judicial review and enforcement.

(6) A municipally owned utility and an electric utility that provides delivery service in the same municipality as the municipally owned utility may enter into a written agreement to define the territorial boundaries of each utility's delivery service area and any other terms and conditions as necessary to provide delivery service. The agreement is not effective unless approved by the governing body of the municipally owned utility and the commission. The governing body of the municipally owned utility and the commission shall annually review and supervise compliance with the terms of the agreement. At the request of a party to the agreement, disputes arising under the agreement shall be decided by the commission subject to judicial review and enforcement.

(7) If the governing body of a municipally owned utility establishes a program to permit any of its customers the opportunity to choose an alternative electric supplier, the governing body of the municipally owned utility shall have exclusive jurisdiction to do all of the following:

(a) Set delivery service rates applicable to services provided by the municipally owned utility that shall not be unduly discriminatory.

(b) Determine the amount and types of, and recovery mechanism for, stranded and transition costs that will be charged.

(c) Establish rules, terms of access, and conditions that it considers appropriate for the implementation of a program to allow customers the opportunity of choosing an alternative electric supplier.

(8) Complaints alleging unduly discriminatory rates or other noncompliance arising under subsection (7) shall be filed in the circuit court for the county in which the municipally owned utility is located. Complaints arising under subsection (4) shall be decided by the commission subject to judicial review and enforcement.

(9) This section does not prevent or limit a municipally owned utility from selling electricity at wholesale. A municipally owned utility selling at wholesale is not considered to be an alternative electric supplier and is not subject to regulation by the commission.

(10) If a municipally owned utility complies with subsection (4)(a), (b), and (e) and is a member of a joint agency established under the Michigan energy employment act of 1976, 1976 PA 448, MCL 460.801 to 460.848, it may with the consent of the joint agency assign to the joint agency an amount of load up to the amount that it is allowed to serve as an electric supplier under subsection (4)(d), for the purpose of allowing the joint agency the opportunity to sell retail electric generation as an electric supplier, if the joint agency complies with sections 10a(3), 10q, 10r, and 10t and obtains a license under section 10a(2).

(11) This section shall not be construed to impair the contractual rights of a municipally owned utility or customer under an existing contract.

(12) Contracts or other records pertaining to the sale of electricity by a municipally owned utility that are in the possession of a public body and that contain specific pricing or other confidential or proprietary information may be exempted from public disclosure requirements by the governing body of a municipally owned utility. Upon showing of good cause, disclosure subject to appropriate confidentiality provisions may be ordered by a court or the commission.

(13) This section does not affect the validity of the order relating to the terms and conditions of service in the Traverse City area that was issued August 25, 1994, by the commission at the request of consumers power company and the light and power board of the city of Traverse City.

(14) Except as otherwise provided under subsections (4)(c), (4)(e), and (10), sections 6*l*, 10 through 10x, and 10z through 10bb do not apply to a municipally owned utility.

(15) As used in this section:

(a) “Delivery service” means the providing of electric transmission or distribution to a retail customer.

(b) “Municipality” means any city, village, or township.

(c) “Customer account services” means billing and collection, provision of a meter, meter maintenance and testing, meter reading, and other administrative activity associated with maintaining a customer account.

(16) In the event that an entity purchases 1 or more divisions or business units, or generating stations or generating units, of a municipal electric utility, the acquiring entity's contract and agreements with the selling municipality shall require all of the following for a period of at least 30 months:

(a) That the acquiring entity or persons hires a sufficient number of employees to safely and reliably operate and maintain the station, division, or unit by first making offers of employment to the workforce of the municipal electric utility's division, business unit, or generating unit.

(b) That the acquiring entity or persons not employ employees from outside the municipal electric utility's workforce unless offers of employment have been made to all qualified employees of the acquired business unit or facility.

(c) That the acquiring entity or persons have a dispute resolution mechanism culminating in a final and binding decision by a neutral third party for resolving employee complaints or disputes over wages, fringe benefits, and working conditions.

(d) That the acquiring entity or persons offer employment at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer of ownership of the division, business unit, generating station, or generating unit. The wage rates and substantially equivalent fringe benefits and terms and conditions of employment shall continue for at least 30 months from the time of the transfer of ownership unless the employees, or where applicable collective bargaining representative, and the new employer mutually agree to different terms and conditions of the employment within that 30-month period.

(e) An acquiring entity is exempt from the obligations in this subsection if the selling municipality transfers all displaced municipal electric utility employees to positions of employment within the municipality at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer. The wage rates and substantially equivalent fringe benefits and terms and conditions of employment shall continue for at least 30 months from the time of the transfer unless the employees, or where applicable collective bargaining representative, and the municipality mutually agree to different terms and conditions of the employment within that 30-month period.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10z Provisions of act as severable.

Sec. 10z. Effective on the date the first securitization bonds are issued under this act, if any provision of this act or portion of this act is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity or continuation of the amendatory act that added this section, or any part of those provisions, or any other provision of this act that is relevant to the issuance, administration, payment, retirement, or refunding of securitization bonds or to any actions of the electric utility, its successors, an assignee, a collection agent, or a financing party, which shall remain in full force and effect.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10aa Impairment of contractual rights under existing contract.

Sec. 10aa. Nothing in this act impairs the contractual rights of electric utilities or customers under an existing contract that has been approved by the commission under section 11 of 1909 PA 300, MCL 462.11.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10bb Aggregation; use; definition.

Sec. 10bb. (1) Aggregation may be used for the purchasing of electricity and related services from an alternative electric supplier.

(2) Local units of government, public and private schools, universities, and community colleges may aggregate for the purpose of purchasing electricity for themselves or for customers within their boundaries with the written consent of each customer aggregated. Customers within a local unit of government shall continue to have the right to choose their electricity supplier and are not required to purchase electricity through the aggregator.

(3) As used in this section, "aggregation" means the combining of electric loads of multiple retail customers or a single customer with multiple sites to facilitate the provision of electric service to such customers.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10cc Provisions as severable; certain rate reductions as void.

Sec. 10cc. (1) Except as otherwise provided under subsection (2), if any provision of this act is found to be invalid or unconstitutional, the remaining provisions shall not be affected and will remain in full force and effect.

(2) If any provision of this act is found to be invalid or unconstitutional in a manner which prevents the issuance of securitization bonds that would otherwise be allowed, the rate reductions required under section 10d shall also be void and the rates shall return to those in effect on May 1, 2000.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1993-9

460.20 Transfer of powers and duties of the utility consumer participation board from the department of management and budget to the department of commerce by a type II transfer.

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the Utility Consumer Participation Board was created within the Department of Management and Budget by Section 6*l* of Act No. 304 of the Public Acts of 1982, being Section 460.6*l* of the Michigan Compiled Laws; and

WHEREAS, the functions, duties and responsibilities assigned to the Utility Consumer Participation Board can be more effectively carried out under the supervision and direction of the head of the Department of Commerce.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

(1) All the statutory authority, powers, duties, functions and responsibilities of the Utility Consumer Participation Board are hereby transferred to the Department of Commerce, but not within the Public Service Commission, by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

(2) Those activities with respect to the fund delegated by Section 6m of Act No. 304 of the Public Acts of 1982, being Section 460.6m of the Michigan Compiled Laws, to the state treasurer shall remain with and continue to be performed by the treasurer.

(3) The Director of the Office of Contract Management of the Department of Management and Budget shall provide executive direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Department of Commerce, and all prescribed functions of rule making, grant awards, grant payments and revenue collection shall be transferred to the Department of Commerce.

(4) All records, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Utility Consumer Participation Board for the activities transferred are hereby transferred to the Department of Commerce to the extent required to provide for the efficient and effective operation of the Utility Consumer Participation Board.

(5) The Director of the Office of Contract Management of the Department of Management and Budget and the Director of the Department of Commerce shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or obligations to be resolved by the Utility Consumer Participation Board.

(6) All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

(7) Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective 60 days after filing.

History: 1993 E.R.O. No. 1993-9, Eff. Nov. 17, 1993.

PUBLIC SERVICE COMMISSION INSPECTORS AS PEACE OFFICERS
Act 115 of 1970

460.41 Repealed. 1982, Act 531, Imd. Eff. Dec. 31, 1982.

MICHIGAN PUBLIC UTILITIES COMMISSION
Act 419 of 1919

AN ACT to provide for the regulation and control of certain public utilities operated within this state; to create a public utilities commission and to define the powers and duties thereof; to abolish the Michigan railroad commission and to confer the powers and duties thereof on the commission hereby created; to provide for the transfer and completion of matters and proceedings now pending before said railroad commission; and to prescribe penalties for violations of the provisions hereof.

History: 1919, Act 419, Imd. Eff. May 15, 1919.

The People of the State of Michigan enact:

460.51 Repealed. 1993, Act 354, Imd. Eff. Jan. 14, 1994.

Compiler's note: The repealed section pertained to public utilities commission.

460.52 Repealed. 1975, Act 82, Imd. Eff. May 20, 1975.

Compiler's note: The repealed section pertained to appointment and compensation of officers, employees, engineers, and experts.

460.53, 460.53a Repealed. 1993, Act 354, Imd. Eff. Jan. 14, 1994.

Compiler's note: The repealed sections pertained to railroad commmission and equipment of vehicles for transporting employees.

460.54 Public utilities commission; powers and duties concerning rates; franchise rights; municipally owned utility.

Sec. 4. In addition to the rights, powers and duties vested in and imposed on said commission by the preceding section, its jurisdiction shall be deemed to extend to and include the control and regulation, including the fixing of rates and charges, of all public utilities within this state, producing, transmitting, delivering or furnishing steam for heating or power, or gas for heating or lighting purposes for the public use. Subject to the provisions of this act the said commission shall have the same measure of authority with reference to such utilities as is granted and conferred with respect to railroads and railroad companies under the various provisions of the statutes creating the Michigan railroad commission and defining its powers and duties. The power and authority granted by this act shall not extend to, or include, any power of regulation or control of any municipally owned utility; and it shall be the duty of said commission on the request of any city or village to give advice and render such assistance as may be reasonable and expedient with respect to the operation of any utility owned and operated by such city or village. In no case shall the commission have power to change or alter the rates or charges fixed in, or regulated by, any franchise or agreement heretofore or hereafter granted or made by any city, village or township. It shall be competent for any municipality and any public utility operating within the limits of said municipality, whether such utility is operating under the terms of a franchise or otherwise, to join in submitting to the commission any question involving the fixing or determination of rates or charges, or the making of rules or conditions of service, and the commission shall thereupon be empowered, and it shall be its duty to make full investigation as to all matters so submitted and to fix and establish such reasonable maximum rates and charges, and prescribe such rules and conditions of service and make such determination and order relative thereto as shall be just and reasonable. Such order when so made shall have like force and effect as other orders made under the provisions of this act. In any case where a franchise under which a utility is, or has been, operated, including street railways, shall have heretofore expired or shall hereafter expire, the municipality shall have the right to petition the commission to fix the rates and charges of said utility in accordance with the provisions of this act, or to make complaint as herein provided with reference to any practice, service or regulation of such utility, and thereupon said commission shall have full jurisdiction in the premises.

History: 1919, Act 419, Imd. Eff. May 15, 1919;—CL 1929, 11009;—Am. 1931, Act 138, Eff. Sept. 18, 1931;—CL 1948, 460.54.

460.55 Additional reports; verification; rules of commission; penalties.

Sec. 5. In addition to the reports now required to be made by any public utility under the laws of the state relating to the Michigan railroad commission, it shall be competent for the public utilities commission to require the making of such additional and further reports and the supplying of such data as is reasonably necessary for the proper performance of the powers and duties hereby contemplated. Any report required to be made by a utility operated and controlled by a corporation, joint stock company or association shall be verified by the affidavit of the president and secretary thereof. In all other cases such verification shall be made by the owner, or 1 of them, or by the general manager. Said commission shall have power and authority

to make, adopt and enforce rules and regulations for the conduct of its business and the proper discharge of its functions hereunder, and all persons dealing with the commission or interested in any matter or proceedings pending before it shall be bound by such rules and regulations. The commission shall also have authority to make and prescribe regulations for the conducting of the business of public utilities, subject to the jurisdiction thereof, and it shall be the duty of every corporation, joint stock company, association or individual owning, managing or operating any such utility to obey such rules and regulations. Any such corporation, joint stock company, association or individual refusing or neglecting so to do, or refusing or neglecting to make any report required hereunder, shall be liable to a penalty of not less than 100 dollars nor more than 1,000 dollars; and the officer or individual in default shall also be deemed to be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than 10 dollars nor more than 1,000 dollars, or to imprisonment in the county jail not more than 6 months, or both such fine and imprisonment in the discretion of the court.

History: 1919, Act 419, Imd. Eff. May 15, 1919;—CL 1929, 11010;—CL 1948, 460.55.

Administrative rules: R 460.511 et seq.; R 460.915 et seq.; R 460.1451 et seq.; R 460.1951 et seq.; R 460.2011 et seq.; R 460.2051 et seq.; R 460.2101 et seq.; R 460.2211 et seq.; R 460.2501 et seq.; R 460.2601 et seq.; and R 460.3101 et seq. of the Michigan Administrative Code.

460.56 Books, records and accounts of public utility; examination by commission; failure to obey order, penalty; compulsory process.

Sec. 6. Said commission shall have authority to examine, or cause to be examined, the books, accounts and records kept on behalf of any public utility subject to the jurisdiction thereof. For the purpose of making such examination any member of the commission or any examiner or employee thereof shall be given free and full access to said books, accounts and records. Any person, or persons, in any way preventing or obstructing such examination or interfering with the person or persons authorized to make the same shall be deemed guilty of a misdemeanor. It shall also be competent for the commission to require by order or subpoena, which may be served in the same manner as is a subpoena issued out of the circuit court, the production of any books, papers or records relating to the operating or management of any such utility. The owner or manager or the officers of any corporation, company, or association, owning or operating any such utility, may likewise be summoned to appear before the commission to answer such questions as may be put to him touching the operation and business of such utility. Neglect or refusal to obey any such order or subpoena or refusal to so testify shall render the person or persons in default guilty of a misdemeanor. Said commission may also apply to any circuit court of the state for compulsory process to enforce any such order or subpoena, and said court shall have jurisdiction to compel obedience in the same manner as compliance with an order of the court might be enforced under the laws of the state pertaining thereto.

History: 1919, Act 419, Imd. Eff. May 15, 1919;—CL 1929, 11011;—CL 1948, 460.56.

460.57 Principal office of public utility; books, accounts, papers, and records; filing, printing, and posting of rate schedules; approval of schedule and changes therein; rules and regulations.

Sec. 7. Any corporation, joint stock company, association, or individual operating a public utility within this state subject to the provisions of this act shall have and maintain a principal office within this state. All books, accounts, papers, and records pertaining to the business and operation of the utility shall be kept in the office, unless the commission by special order or by rule or regulation may otherwise provide. Schedules of rates in a form and in such detail as the commission may direct shall be filed in the office of the commission and copies of the schedules shall be printed and posted in the principal office of the utility and other such locations as the commission may direct. A schedule shall not be operative unless and until it has been approved by the commission; nor shall any change be made in the schedules except upon approval of the commission. The commission may adopt rules and regulations governing the presentation of the schedules and desired changes, and action on the schedules, and shall have full authority to regulate the procedure to be observed.

History: 1919, Act 419, Imd. Eff. May 15, 1919;—CL 1929, 11012;—CL 1948, 460.57;—Am. 1988, Act 231, Imd. Eff. July 8, 1988
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Administrative rules: R 460.2011 et seq. and R 460.2051 et seq. of the Michigan Administrative Code.

460.58 Complaint; procedure for investigation; contempt; order of commission; witness fees.

Sec. 8. Upon complaint in writing that any rate, classification, regulation or practice charged, made or observed by any public utility is unjust, inaccurate, or improper, to the prejudice of the complainant, the

commission shall proceed to investigate the matter. The procedure to be followed in all such cases shall be prescribed by rule of the commission: Provided, however, That in all cases reasonable notice shall be given to the parties concerned as to the time and place of hearing. An investigation of any such complaint, and the formal hearing thereon, if such is deemed necessary, may be held at any place within the state and by any member or members of the commission, or by any duly authorized representative thereof. Witnesses may be summoned and the production of books, and records before the commission, or the member, or any duly authorized representative thereof conducting the hearing, may be required. Any witness summoned to appear or to produce papers at any such hearing, who neglects or refuses so to do shall be deemed guilty of a contempt. It shall be competent for the commission in any such case to make application to any circuit court of the state setting forth the facts of the matter. Thereupon said court shall have the same power and authority to punish for the contempt and to compel obedience to the subpoena or order of the commission as though such person were in contempt of such court or had neglected or refused to obey its lawful order or process. The taking of testimony at such hearing shall be governed by the rules of the commission: Provided, That at the request of either party a record of such testimony shall be taken and preserved. Upon the completion of any such hearing, the commission shall have authority to make an order or decree dismissing the complaint or directing that the rate, charge, practice or other matter complained of, shall be removed, modified or altered, as the commission deems just, equitable and in accordance with the rights of the parties concerned. For attending on any such hearing, any witness summoned by the commission shall be entitled to the same fees as are, or may be, provided by law for attending the circuit court in any civil matter or proceedings, which said fees shall be paid out of the general fund in the treasury of the state. All claims for such fees shall be approved by the secretary, or by some member of the commission, and shall be audited and allowed by the board of state auditors.

History: 1919, Act 419, Imd. Eff. May 15, 1919;—CL 1929, 11013;—CL 1948, 460.58.

460.59 Review of order or decree.

Sec. 9. Any order or decree shall be subject to review in the manner provided for in section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.

History: 1919, Act 419, Imd. Eff. May 15, 1919;—CL 1929, 11014;—CL 1948, 460.59;—Am. 1987, Act 7, Eff. Apr. 1, 1987.

460.60 Rights not conferred.

Sec. 10. Nothing herein contained shall be deemed to confer upon any corporation, joint stock company, association or individuals any rights or privileges whatsoever of a determinate or of an indeterminate nature with respect to the use and enjoyment of franchises or the use and occupation of any street, highway or alley within the state.

History: 1919, Act 419, Imd. Eff. May 15, 1919;—CL 1929, 11015;—CL 1948, 460.60.

460.61 Repealed. 1978, Act 272, Imd. Eff. June 29, 1978.

Compiler's note: The repealed section pertained to fee for issuance of securities.

460.61a Disposition of funds paid into state treasury.

Sec. 11a. Notwithstanding this or any other act to the contrary, all funds paid into the state treasury under this act shall be credited to a special account to be utilized solely to finance the cost of regulating public utilities.

History: Add. 1972, Act 334, Imd. Eff. Jan. 4, 1973.

460.62 Declaration of necessity.

Sec. 12. This act is hereby declared immediately necessary for the preservation of the public peace, health and safety.

History: 1919, Act 419, Imd. Eff. May 15, 1919;—CL 1929, 11017;—CL 1948, 460.62.

PUBLIC UTILITIES COMMISSION
Act 200 of 1925

460.101,460.102 Repealed. 1993, Act 354, Imd. Eff. Jan. 14, 1994.

COSTS OF REGULATING PUBLIC UTILITIES
Act 299 of 1972

AN ACT to provide for the assessment, collection and disposition of the costs of regulation of public utilities.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

The People of the State of Michigan enact:

460.111 Definitions.

Sec. 1. As used in this act:

(a) "Commission" means the public service commission.

(b) "Department" means the department of commerce.

(c) "Public utility" means a steam, heat, electric, power, gas, water, wastewater, telecommunications, telegraph, communications, pipeline, or gas producing company regulated by the commission, whether private, corporate, or cooperative, except a municipally owned utility.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972;—Am. 1992, Act 36, Imd. Eff. Apr. 21, 1992;—Am. 2005, Act 189, Imd. Eff. Nov. 7, 2005.

460.112 Assessments against public utilities; amount; apportionment.

Sec. 2. The department within 30 days after the enactment into law of any appropriation to it, shall ascertain the amount of the appropriation attributable to the regulation of public utilities. This amount shall be assessed against the public utilities and shall be apportioned amongst them as follows: The gross revenue for the preceding calendar year derived from intrastate operations for each public utility shall be totaled and each public utility shall pay a portion of the assessment in the same proportion that its gross revenue for the preceding calendar year derived from intrastate operations bears to such total. Each public utility shall pay a minimum assessment of not less than $50.00.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

460.113 Deductions from assessments.

Sec. 3. For the fiscal year commencing July 1, 1973 and annually thereafter, there shall be deducted from any amount to be assessed under section 2 an amount equal to the difference by which the actual expenditures for the previous fiscal year attributable to the regulation of public utilities are less than the amounts appropriated for those purposes. Such deductions shall be made in the same proportion as the original assessments in section 2 of the act.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

460.114 Repealed. 1978, Act 272, Imd. Eff. June 29, 1978.

Compiler's note: The repealed section pertained to credit for fees paid.

460.115 Disposition of moneys paid by public utilities.

Sec. 5. All moneys paid into the state treasury by a public utility under this act shall be credited to a special account, to be utilized solely to finance the cost of regulating public utilities.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

460.116 Objections to assessments; notice; hearing; findings; payment of assessments; interest on unpaid assessments; action by attorney general.

Sec. 6. Within 15 days after the receipt of any statement of amount assessed under this act, the public utility may file with the commission objections setting forth in detail the grounds upon which the assessment is claimed to be excessive, erroneous, unlawful or invalid. The commission, after notice to the utility shall hold a hearing on the objections. If, after hearing, the commission finds the assessment is not excessive, erroneous, unlawful or invalid in whole or in part, it shall record its findings and transmit them to the public utility and again mail or serve a copy of the assessment upon the utility. Statements of assessment to which objections have not been filed, and statements of assessment and amended statements of assessment mailed or served after a hearing upon objections shall be paid not later than 30 days after their receipt. Assessments not paid when due shall bear interest at the rate of 1% per month. Statements of unpaid assessments together with interest thereon shall be recovered by the attorney general by appropriate action.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

460.117 Restraining or delaying collection or payment of assessments; statement of claim; action for recovery of payment; issues; review; remedy exclusive.

Sec. 7. A suit or proceeding shall not be maintained in a court for the purpose of restraining or delaying the collection or payment of an assessment made under this act. A person or corporation making a payment under this act, believing the amount to be excessive, erroneous, unlawful or invalid may file a statement of claim with the court of claims. In an action for recovery of a payment made under this act, the claimant may raise every relevant issue of law and fact, evidenced by the record made before the commission. The court of claims may review questions of law and fact involved in a final decision or determination of the commission made under this act. The procedure providing for the determination of the lawfulness of assessments and the recovery of payments made under this act shall be exclusive of all other remedies and procedures.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

460.118 Exemption of certain public utilities.

Sec. 8. The commission may exempt a public utility from this act, if, after notice and hearing, it determines that gross revenues derived from intrastate operations is not a fair or equitable basis for assessing the costs of regulating that public utility and prescribes a fair and equitable manner for assessing such costs of regulation.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

460.119 Fees in lieu of assessment.

Sec. 9. Any public utility over which the commission has jurisdiction solely pursuant to the provisions of Act No. 9 of the Public Acts of 1929, as amended, being sections 483.101 to 483.120 of the Compiled Laws of 1948 or Act No. 16 of the Public Acts of 1929, as amended, being sections 483.1 to 483.11 of the Compiled Laws of 1948 or Act No. 144 of the Public Acts of 1909, as amended, being sections 460.301 to 460.303 of the Compiled Laws of 1948, shall pay fees as prescribed by the commission in lieu of any assessment under the provisions of this act.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

460.120 Effective date.

Sec. 10. This act shall take effect when Senate Bill No. 699 of 1971 is enacted and becomes effective.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

Compiler's note: Senate Bill No. 699 of 1971, referred to in this section, became Act 300 of 1972.

EMERGENCY ENERGY ACT OF 1973
Act 1 of 1974

460.151-460.184 Expired. 1974, Act 1, Eff. June 30, 1974.

CARRIERS BY WATER
Act 246 of 1921

AN ACT to regulate the service, rates, fares and charges of carriers by water within this state.

History: 1921, Act 246, Imd. Eff. May 18, 1921.

The People of the State of Michigan enact:

460.201 Carriers by water; rates; filing, fixing by commission, exception.

Sec. 1. Any and all persons, firms and corporations engaged in the transportation of freight, passengers, or express, by water, wholly within this state shall, within 30 days after this act shall take effect, make and file with the Michigan public utilities commission in such form as it shall prescribe, its schedule of rates, fares, and charges for the carrying of freight, passengers, and express; which said rates, fares and charges shall continue in force until superseded by other schedules, filed in the manner above prescribed, by said carrier, with the Michigan public utilities commission: Provided, however, That said Michigan public utilities commission may, either upon request, or upon its own motion, suspend the operation of any rate, fare, charge, or tariff filed as aforesaid, for a period not exceeding 30 days; and in case any such rate, fare, charge, or tariff shall be suspended by said Michigan public utilities commission, it shall give the interested carrier immediate notice thereof, and, within 10 days from the date of such suspension, shall fix a date of hearing, not more than 20 days from the date of said suspension, and shall give notice thereof to said carrier and to other persons in interest, who may be heard; and after said hearing said commission shall fix the rate, fare, charge, or tariff in the matter complained of; and such rate, fare, charge or tariff, when so fixed, shall continue to be the legal rate, fare, charge, or tariff in force until superseded as provided by law: Provided, That any ferry company operating within any municipality under an agreement with such municipality shall not be affected either as to fares or operation by this act.

History: 1921, Act 246, Imd. Eff. May 18, 1921;—CL 1929, 11071;—CL 1948, 460.201.

Compiler's note: The public utilities commission, referred to in this section, was abolished and its powers and duties transferred to the public service commission by § 460.4.

460.202 Carriers by water; audit of books by commission; duty to furnish data.

Sec. 2. The Michigan public utilities commission may examine any and all books, accounts, records, and papers of any such carrier by water, and audit the same; and it shall be the duty of any such carrier by water, to furnish to said Michigan public utilities commission, its proper officers, and employes, any and all data in relation to its investment, income, operating expenses, and such other statistical data as it may require.

History: 1921, Act 246, Imd. Eff. May 18, 1921;—CL 1929, 11072;—CL 1948, 460.202.

460.203 Carriers by water; rules of commission.

Sec. 3. The Michigan public utilities commission is hereby authorized, empowered and directed to make all needful rules and regulations governing its investigations of the affairs of such carriers by water, and to prescribe the form of all reports required from such carriers.

History: 1921, Act 246, Imd. Eff. May 18, 1921;—CL 1929, 11073;—CL 1948, 460.203.

460.204 Carriers by water; investigation, regulation of service and fixing of rates.

Sec. 4. Whenever any complaint shall be made to said Michigan public utilities commission by any person, firm, or corporation against any rate, fare, charge, or tariff of any carrier by water within this state, or against any rule, regulation, or service of such carrier, or against the neglect, failure, or refusal of any such carrier to make, observe or perform any rate, fare, charge, or tariff, or any rule, regulation, or service, said Michigan public utilities commission shall investigate the same, and it may regulate the performance or observance of any rate, fare, charge, or tariff, and any rule, regulation, or service, and may prescribe the same to be observed by such carrier: Provided, That such carrier shall in all cases be entitled to reasonable notice and an opportunity to be heard on such investigation before any rate, fare, charge, or tariff, or any rule, regulation, or service shall be prescribed, established, or imposed by said commission, in accordance with the terms of this section, and when any rate, fare, charge, or tariff, or any rule, regulation, or service shall be prescribed, established, or imposed by said commission, it shall thereafter be the duty of said carrier to observe and obey the same.

History: 1921, Act 246, Imd. Eff. May 18, 1921;—CL 1929, 11074;—CL 1948, 460.204.

460.205 Carriers by water; review of orders of regulation.

Sec. 5. Any order made by the Michigan public utilities commission prescribing or affecting any rate, fare, charge, or tariff, or any rule, regulation, or service of any carrier by water within this state, shall be subject to review in the same manner as is now provided by law for the review of orders made by said Michigan public utilities commission.

History: 1921, Act 246, Imd. Eff. May 18, 1921;—CL 1929, 11075;—CL 1948, 460.205.

460.206 Penalty.

Sec. 6. Any person, firm, or corporation violating any of the provisions of this act, or any order of the Michigan public utilities commission made in pursuance thereof, shall be punishable by a fine not to exceed 100 dollars for each violation, and any officer or director of any corporation violating the provisions of this act, or any of the orders of the Michigan public utilities commission made in pursuance thereof, shall be punishable by a fine not exceeding 100 dollars for each such violation, or by imprisonment in the county jail for not more than 3 months, or by both such fine and punishment, in the discretion of the court.

History: 1921, Act 246, Imd. Eff. May 18, 1921;—CL 1929, 11076;—CL 1948, 460.206.

PUBLIC UTILITIES SECURITIES
Act 144 of 1909

460.301-460.303 Repealed. 1995, Act 246, Imd. Eff. Dec. 27, 1995.

ORDERS AND JURISDICTION OF PUBLIC SERVICE COMMISSION
Act 149 of 1996

AN ACT to validate certain orders; and to extend the jurisdiction of the Michigan public service commission over the regulation and issuance of certain stocks, bonds, and other evidences of indebtedness.

History: 1996, Act 149, Imd. Eff. Mar. 25, 1996.

The People of the State of Michigan enact:

460.311 Repeal of §§ 460.301 to 460.303; effect on certain public service commission orders.

Sec. 1. The repeal of Act No. 144 of the Public Acts of 1909, being sections 460.301 to 460.303 of the Michigan Compiled Laws, did not alter or void any order issued by the Michigan public service commission authorizing the issue of securities under Act No. 144 of the Public Acts of 1909.

History: 1996, Act 149, Imd. Eff. Mar. 25, 1996.

460.312 Jurisdiction of commission over stocks, bonds, or other evidences of indebtedness.

Sec. 2. Notwithstanding the repeal of former Act No. 144 of the Public Acts of 1909, being sections 460.301 to 460.303 of the Michigan Compiled Laws, the Michigan public service commission shall continue to have jurisdiction over any stocks, bonds, or other evidences of indebtedness that were issued pursuant to an order of the commission under former Act No. 144 of the Public Acts of 1909.

History: 1996, Act 149, Imd. Eff. Mar. 25, 1996.

REHEARINGS BY PUBLIC UTILITY COMMISSION
Act 94 of 1923

AN ACT to authorize the Michigan public utilities commission to grant rehearings and to alter, modify or amend its findings and orders.

History: 1923, Act 94, Eff. Aug. 30, 1923.

The People of the State of Michigan enact:

460.351 Rehearings; amendment of orders.

Sec. 1. The Michigan public utilities commission, in any proceeding which may now be pending before it or which shall hereafter be brought before it, shall have full power and authority to grant rehearings and to alter, amend or modify its findings and orders.

History: 1923, Act 94, Eff. Aug. 30, 1923;—CL 1929, 11081;—CL 1948, 460.351.

Compiler's note: The public utilities commission, referred to in this section, was abolished and its powers and duties transferred to the public service commission by MCL 460.4.

For transfer of functions relating to the regulation of common carrier railroads from the Public Service Commission to the Department of Transportation, see E.R.O. No. 1982-3, compiled at MCL 247.823 of the Michigan Compiled Laws.

Transfer of powers: See MCL 247.823.

460.352 Suit to review order; time.

Sec. 2. The time allowed by law for the bringing of suit to review any order of the commission, shall continue after the order denying a rehearing or made upon a rehearing, for the same number of days now provided by law for review of the order upon which such rehearing was denied or had.

History: 1923, Act 94, Eff. Aug. 30, 1923;—CL 1929, 11082;—CL 1948, 460.352.

Compiler's note: For transfer of functions relating to the regulation of common carrier railroads from the Public Service Commission to the Department of Transportation, see E.R.O. No. 1982-3, compiled at MCL 247.823 of the Michigan Compiled Laws.

EXPENSES OF AUDIT AND APPRAISAL BY PUBLIC UTILITY COMMISSION
Act 47 of 1921

460.401-460.403 Repealed. 1978, Act 272, Imd. Eff. June 29, 1978.

MUNICIPAL PUBLIC UTILITIES; UNIFORM SYSTEM OF ACCOUNTS
Act 38 of 1925

460.451 Repealed. 1986, Act 261, Eff. Dec. 9, 1986.

LOANS TO CITIES OR VILLAGES OWNING PUBLIC UTILITIES
Act 182 of 1971

AN ACT to permit a city or village owning and operating a public utility to borrow money for a term not to exceed 5 years for the purpose of purchasing, acquiring, constructing, improving, enlarging, extending or repairing the facilities of the public utility; to issue notes or other evidences of indebtedness therefor; to repay such borrowing from the revenues of the utility; to permit the pledging or assignment of bonds or other securities or evidences of debt held as investments for said public utility to secure such borrowings; and to provide other powers, rights and duties.

History: 1971, Act 182, Imd. Eff. Dec. 20, 1971;—Am. 1972, Act 130, Imd. Eff. May 8, 1972.

The People of the State of Michigan enact:

460.461 Loans to cities or villages owning and operating public utilities; evidences of indebtedness; term of loan; security; indebtedness subject to revenue bond act.

Sec. 1. (1) A city or village owning and operating a public utility, without vote of its electors and upon approval of its legislative body, may borrow money and issue and sell its notes or other evidences of indebtedness in the form and on the terms it deems advisable for the purpose of purchasing equipment or fuel, or both, or of purchasing, acquiring, constructing, improving, enlarging, extending, or repairing the facilities of the public utility. Loans shall not be made or notes or other evidences of indebtedness issued for a term exceeding 5 years. Notes or other evidences of indebtedness relating to fuels or supplies shall not exceed a term of 18 months.

(2) Notes or other evidences of indebtedness issued under this act shall not be general obligations of the city or village but shall be secured by and payable from the unencumbered revenues of the utility and other pledges and assignments authorized in this act. The city or village may pledge or assign bonds or other securities or evidences of debt held by it as investments for the public utility as security for the loan and to guarantee its repayment.

(3) Notes or other evidences of indebtedness are subject to the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

History: 1971, Act 182, Imd. Eff. Dec. 20, 1971;—Am. 1972, Act 130, Imd. Eff. May 8, 1972;—Am. 1975, Act 155, Imd. Eff. July 9, 1975;—Am. 2002, Act 409, Imd. Eff. June 3, 2002.

460.462 Home rule city act inapplicable.

Sec. 2. Section 5(g) of the home rule city act, 1909 PA 279, MCL 117.5, relative to notice of intention to issue an obligation, does not apply to any borrowing under this act.

History: 1971, Act 182, Imd. Eff. Dec. 20, 1971;—Am. 1972, Act 130, Imd. Eff. May 8, 1972;—Am. 1983, Act 121, Imd. Eff. July 18, 1983;—Am. 2002, Act 409, Imd. Eff. June 3, 2002.

460.463 Forfeiture of security to pledgee or assignee.

Sec. 3. A pledge or assignment may allow forfeiture of the security to the pledgee or assignee for default or noncompliance with the terms of the loan.

History: 1971, Act 182, Imd. Eff. Dec. 20, 1971.

CERTIFICATE OF CONVENIENCE AND NECESSITY
Act 69 of 1929

AN ACT to define and regulate certain public utilities and to require them to secure a certificate of convenience and necessity in certain cases.

History: 1929, Act 69, Imd. Eff. Apr. 23, 1929.

The People of the State of Michigan enact:

460.501 Certificate of convenience and necessity; definition.

Sec. 1. The term "municipality", when used in this act, means a city, village or township.

The term "public utility", when used in this act, means persons and corporations, other than municipal corporations, or their lessees, trustees and receivers now or hereafter owning or operating in this state equipment or facilities for producing, generating, transmitting, delivering or furnishing gas or electricity for the production of light, heat or power to or for the public for compensation.

The term "commission", when used in this act, means the Michigan public utilities commission or such other state governmental agency as may exercise the powers now conferred upon said commission.

History: 1929, Act 69, Imd. Eff. Apr. 23, 1929;—CL 1929, 11087;—CL 1948, 460.501.

Compiler's note: The public utilities commission, referred to in this section, was abolished and its powers and duties transferred to the public service commission by § 460.4.

460.502 Certificate of convenience; necessity for gas or electric utilities.

Sec. 2. No public utility shall hereafter begin the construction or operation of any public utility plant or system thereof nor shall it render any service for the purpose of transacting or carrying on a local business either directly, or indirectly, by serving any other utility or agency so engaged in such local business, in any municipality in this state where any other utility or agency is then engaged in such local business and rendering the same sort of service, or where such municipality is receiving service of the same sort, until such public utility shall first obtain from the commission a certificate that public convenience and necessity requires or will require such construction, operation, service, or extension.

History: 1929, Act 69, Imd. Eff. Apr. 23, 1929;—CL 1929, 11088;—CL 1948, 460.502.

460.503 Petition; contents.

Sec. 3. Before any such certificate of convenience and necessity shall issue, the applicant therefor shall file a petition with the commission stating the name of the municipality or municipalities which it desires to serve and the kind of service which it proposes to render, and that the applicant has secured the necessary consent or franchise from such municipality or municipalities authorizing it to transact a local business.

History: 1929, Act 69, Imd. Eff. Apr. 23, 1929;—CL 1929, 11089;—CL 1948, 460.503.

460.504 Hearing; notices.

Sec. 4. Upon filing such application, the commission shall set a day for the hearing thereof in accordance with its rules and practice relating to hearings and notify the applicant thereof. A copy of said application and a notice of the time and place of hearing such application shall also be served upon each and every other utility or agency in the municipality or municipalities proposed to be served by said applicant then rendering similar service therein, and also upon the clerk or other similar officer of each municipality, at least 10 days before such hearing, and said persons so served shall each be permitted to appear and be heard with reference to said application.

History: 1929, Act 69, Imd. Eff. Apr. 23, 1929;—CL 1929, 11090;—CL 1948, 460.504.

460.505 Hearing; matters for consideration; certificate, contents.

Sec. 5. In determining the question of public convenience and necessity the commission shall take into consideration the service being rendered by the utility then serving such territory, the investment in such utility, the benefit, if any, to the public in the matter of rates and such other matters as shall be proper and equitable in determining whether or not public convenience and necessity requires the applying utility to serve the territory. Every certificate of public convenience and necessity issued by the commission, under the authority hereby granted, shall describe in detail the territory in which said applicant shall operate and it shall not operate in or serve any other territory under the authority of said certificate.

History: 1929, Act 69, Imd. Eff. Apr. 23, 1929;—CL 1929, 11091;—CL 1948, 460.505.

460.506 Review of order or decree.

Sec. 6. Any order or decree of the Michigan public service commission shall be subject to review in the manner provided for in section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.

History: 1929, Act 69, Imd. Eff. Apr. 23, 1929;—CL 1929, 11092;—CL 1948, 460.506;—Am. 1987, Act 11, Imd. Eff. Mar. 31, 1987.

Compiler's note: For provisions of Act 419 of 1919, referred to in this section, see § 460.51 et seq.

TRANSMISSION OF ELECTRICITY
Act 106 of 1909

AN ACT to regulate the transmission of electricity through the public highways, streets and places of this state, where the source of supply and place of use are in the same or different counties; to regulate the charges to be made for electricity so transmitted; to regulate the rules and conditions of service under which said electricity shall be furnished and to confer upon the Michigan public utilities commission certain powers and duties in regard thereto.

History: 1909, Act 106, Eff. Sept. 1, 1909;—Am. 1921, Act 274, Eff. Aug. 18, 1921.

The People of the State of Michigan enact:

460.551 Transmission of electricity in or between counties; control.

Sec. 1. When electricity is generated or developed by steam, water or other power, within 1 county of this state, and transmitted and delivered to the consumer in the same or some other county, then the transmission and distribution of the same in or on the public highways, streets and places, the rate of charge to be made to the consumer for the electricity so transmitted and distributed and the rules and conditions of service under which said electricity shall be transmitted and distributed shall be subject to regulation as in this act provided.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4842;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—CL 1929, 11093;—CL 1948, 460.551.

Administrative rules: R 460.501 et seq.; R 460.581 et seq.; and R 460.2101 et seq. of the Michigan Administrative Code.

460.552 Transmission of electricity; rate regulation by commission.

Sec. 2. The Michigan public utilities commission, hereinafter referred to as "the commission" shall have control and supervision of the business of transmitting and supplying electricity as mentioned in the first section of this act and no public utility supplying electricity shall put into force any rate or charge for the same without first petitioning said commission for authority to initiate or put into force such rate or charge and securing the affirmative action of the commission approving said rate or charge.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4843;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—CL 1929, 11094;—CL 1948, 460.552.

Compiler's note: The public utilities commission, referred to in this section, was abolished and its powers and duties transferred to the public service commission by § 460.4.

460.553 Transmission of electricity; user of streets, regulation.

Sec. 3. Any person, firm or corporation engaged or organized to engage in any such business of transmitting and supplying electricity in 1 or more counties of this state shall, with the consent of the duly constituted city, village and township authorities of the cities, villages and townships in or through which it operates or may hereafter propose to operate, have the right to use the highways, streets, alleys and other public places of such cities, villages and townships: Provided, That in all cases each transmission line used shall have insulation and conductivity in accordance with its voltage. In case it has or procures a franchise from any city, village or township or a right to do business therein, it may transact a local business therein. Nothing herein contained shall be construed to impair any right possessed by any village or township to the reasonable control of its streets, alleys and public places in all matters of mere local concern.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4844;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—CL 1929, 11095;—CL 1948, 460.553.

460.554 Data and information; specifications of construction; filing; height of lines; stenciling of poles; act subject to electric transmission line certification act.

Sec. 4. (1) If required by the commission, an electric utility erecting lines to transmit electricity in or through the highways, streets, or public places of 1 or more counties of this state shall prepare and file with the commission data and information concerning the method and manner of the construction of those lines, the franchise or consent under which those lines were constructed or are being maintained, and other information the commission reasonably requires. The commission may require the filing of detailed specifications covering the type of construction of transmission lines. The specifications shall show the details of construction of lines of various voltages. If the commission approves the specifications, all lines built by the electric utility shall be constructed according to the specifications. Transmission lines at all highway crossings shall be not less than 22 feet high and at railroad crossings shall be in accordance with the commission's rules made under authority of law. The commission may require all poles used in transmitting

electricity to be stenciled or otherwise marked with the owner's name.

(2) This act is subject to the electric transmission line certification act.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4845;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—Am. 1923, Act 93, Eff. Aug. 30, 1923;—CL 1929, 11096;—CL 1948, 460.554;—Am. 1995, Act 33, Imd. Eff. May 17, 1995.

460.555 Public utility commission; inspection; order for improvements.

Sec. 5. The commission shall have power to inspect and examine all such electrical apparatus already installed in any public highways, streets or places and all such apparatus hereafter installed, and to investigate from time to time the method employed by persons, firms or corporations transmitting and supplying electricity, and shall have power to order such improvements in such method as shall be necessary to secure good service and the safety of the public and of those employed in the business of transmitting and distributing such electricity, and of any persons liable to be injured by the erection, maintenance and use of such apparatus.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4846;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—CL 1929, 11097;—CL 1948, 460.555.

460.556 Public utility commission; discretionary powers; annual report of utilities; audit, expense.

Sec. 6. The commission shall have power in its discretion to order electric current for distribution to be delivered at a suitable primary voltage, to any city, village or township through which a transmission line or lines may pass; to order service to be rendered by any such electric utility in any case in which it will be reasonable for such service to be ordered; prescribe uniform methods of keeping accounts to be observed by all persons, firms or corporations engaged in such business of transmitting and supplying electricity, and to keep informed as to the methods employed by all electric utilities in the transaction of their business; and to see that their property is maintained and operated for the security and accommodation of the public and in compliance with the provisions of law. It shall have power to require of such persons, firms or corporations annually a verified report upon such form and giving such information as will enable the commission to better discharge the duties imposed upon it hereby; and shall also have power to require from all electric utilities in the state such information as the commission may need at any time in connection with the performance of the duties imposed upon it by this act. Said commission shall also have power, in connection with any rate or service hearing or investigation, to make such audit and analysis of the books and records of the utility, and such inventory and appraisal of its property as may be necessary in connection with the duties imposed upon the commission by this act; and in any such case the commission shall keep a record of all expenses incurred by it in connection with its investigation of the affairs and property of the said utility and during the progress or at the conclusion of its work, shall state the amount thereof in writing to the said utility and said utility shall pay into the treasury of the state the amount of such expense at such times and in such manner as the commission may by order require. Said moneys when so paid into the state treasury shall go to the credit of the Michigan public utilities commission, and are hereby appropriated to the payment of its expenses.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4847;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—CL 1929, 11098;—CL 1948, 460.556.

460.557 Investigation of complaints; notice; hearing; fixing of rates; rates as just and reasonable; rate-making subject to electric transmission line certification act; rules; review of order or decree.

Sec. 7. (1) The commission shall investigate each complaint against an electric utility submitted in writing by a consumer or a city, village, or township concerning the price of the electricity sold and delivered, the service rendered, or any other matter of complaint. The commission's agents, examiners, inspectors, engineers, and accountants may inspect the system and method used in transmitting and supplying electricity and examine the electric utility's books and papers pertaining to transmitting and supplying electricity, services rendered, or any other matter of complaint.

(2) The commission shall cause a notice of the complaint with a copy of the complaint to be served on the electric utility complained of or affected by the complaint. The electric utility has the right to a hearing in respect to the complaint. After investigation and hearing, the commission may by order fix the price of electricity to be charged by the electric utility within lawful limits. The electric utility shall receive notice of the price fixed by the commission and shall charge that fixed price until the commission changes the fixed price. The commission may establish by order rules and conditions of service that are just and reasonable. In determining the price, the commission shall consider and give due weight to all lawful elements necessary to determine the price to be fixed for supplying electricity, including cost, reasonable return on the fair value of

all property used in the service, depreciation, obsolescence, risks of business, value of service to the consumer, the connected load, the hours of the day when used, and the quantity used each month. However, the commission shall not change or alter the price fixed in or regulated by or under a franchise granted by a city, village, or township.

(3) If identical or substantially identical rates are established in 2 or more contiguous cities, villages, townships, or communities served or whose inhabitants are served by the same electric utility, the territory served shall be treated as a unit for fixing rates. A rate shall not be changed with respect to 1 or more of the cities, villages, townships, or communities so as to establish a rate difference within the territory served, unless it is shown that the continuance of the identical or substantially identical rate or rates will work substantial hardship to a city, village, township, person, firm, or corporation affected or unless otherwise provided by law.

(4) The rates of an electric utility shall be just and reasonable and a consumer shall not be charged more or less than other consumers are charged for like contemporaneous service rendered under similar circumstances and conditions. An electric utility doing business within this state shall not, directly or indirectly by a special rate, rebate, draw-back, or other device, charge, demand, collect, or receive from a person, partnership, or corporation, a greater or lesser compensation for a service rendered than the electric utility charges, demands, collects, or receives from any other person, partnership, or corporation for rendering, a like contemporaneous service.

A person, partnership, or corporation shall not, directly or indirectly, ask, demand, or accept a rebate, draw-back, or other device by which the person, partnership, or corporation shall obtain electric service for a rate less than that charged others in like circumstances.

(5) Rate-making pursuant to this act is subject to the electric transmission line certification act.

(6) The commission may promulgate rules for the conduct of its business and the proper discharge of its functions under this act, pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. A person dealing with the commission or interested in a matter or proceeding pending before the commission is bound by those rules.

(7) An order or decree of the commission is subject to review as provided in section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4848;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—Am. 1923, Act 108, Eff. Aug. 30, 1923;—CL 1929, 11099;—CL 1948, 460.557;—Am. 1987, Act 8, Eff. Apr. 1, 1987;—Am. 1995, Act 33, Imd. Eff. May 17, 1995.

Compiler's note: For provisions of Act 419 of 1919, referred to in this section, see § 460.51 et seq. For provisions of Act 300 of 1909, referred to in this section, see § 462.2 et seq.

Section 2 of Act No. 497 of the Public Acts of 1982, which act amended this section, provided that this "amendatory act shall not take effect unless House Bill No. 5719 (request no. 02467 '81) of the 81st Legislature is enacted into law." House Bill No. 5719 was not enacted into law during the 1982 Regular Session.

Administrative rules: R 460.511 et seq.; R 460.2011 et seq.; R 460.2101 et seq.; R 460.2601 et seq.; and R 460.3101 et seq. of the Michigan Administrative Code.

460.558 Public utility commission; order mandatory; failure to comply, penalty.

Sec. 8. Every corporation, its officers, agents and employes, and all persons and firms engaged in the business of furnishing electricity as aforesaid shall obey and comply with every lawful order made by the commission under the authority of this act so long as the same shall remain in force. Any corporation or person engaged in such business or any officer, agent, or employe thereof, who wilfully or knowingly fails or neglects to obey or comply with such order or any provision of this act shall forfeit to the state of Michigan not to exceed the sum of 300 dollars for each offense. Every distinct violation of any such order or of this act, shall be a separate offense, and in case of a continued violation, each day shall be deemed a separate offense. An action to recover such forfeiture may be brought in any court of competent jurisdiction in this state in the name of the people of the state of Michigan, and all moneys recovered in any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general fund.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4849;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—CL 1929, 11100;—CL 1948, 460.558.

460.559 Scope; limitation.

Sec. 9. This act shall not apply to the transmission or use of electricity for the purpose of conveying intelligence by telegraph, telephone or by other methods now or hereafter adopted therefor.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4850;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—CL 1929, 11101;—CL 1948, 460.559.

ELECTRIC TRANSMISSION LINE CERTIFICATION ACT
Act 30 of 1995

AN ACT to regulate the location and construction of certain electric transmission lines; to prescribe powers and duties of the Michigan public service commission and to give precedence to its determinations in certain circumstances; and to prescribe the powers and duties of certain local units of government and officials of those local units of government.

History: 1995, Act 30, Imd. Eff. May 17, 1995.

The People of the State of Michigan enact:

460.561 Short title.

Sec. 1. This act shall be known and may be cited as the "electric transmission line certification act".

History: 1995, Act 30, Imd. Eff. May 17, 1995.

460.562 Definitions.

Sec. 2. As used in this act:

(a) "Affiliated transmission company" means a person, partnership, corporation, association, or other legal entity, or its successors or assigns, which has fully satisfied the requirements to join a regional transmission organization as determined by the federal energy regulatory commission, is engaged in this state in the transmission of electricity using facilities it owns that were transferred to the entity by an electric utility that was engaged in the generation, transmission, and distribution of electricity in this state on December 31, 2000, and is not independent of an electric utility or an affiliate of the utility, generating or distributing electricity to retail customers in this state.

(b) "Certificate" means a certificate of public convenience and necessity issued for a major transmission line under this act or issued for a transmission line under section 9.

(c) "Commission" means the Michigan public service commission.

(d) "Construction" means any substantial action taken on a route constituting placement or erection of the foundations or structures supporting a transmission line. Construction does not include preconstruction activity or the addition of circuits to an existing transmission line.

(e) "Electric utility" means a person, partnership, corporation, association, or other legal entity whose transmission or distribution of electricity the commission regulates under 1909 PA 106, MCL 460.551 to 460.559, or 1939 PA 3, MCL 460.1 to 460.10cc. Electric utility does not include a municipal utility, affiliated transmission company, or independent transmission company.

(f) "Independent transmission company" means a person, partnership, corporation, association, or other legal entity, or its successors or assigns, engaged in this state in the transmission of electricity using facilities it owns that have been divested to the entity by an electric utility that was engaged in the generation, transmission, and distribution of electricity in this state on December 31, 2000, and is independent of an electric utility or an affiliate of the utility, generating or distributing electricity to retail customers in this state.

(g) "Major transmission line" means a transmission line of 5 miles or more in length wholly or partially owned by an electric utility, affiliated transmission company, or independent transmission company through which electricity is transferred at system bulk supply voltage of 345 kilovolts or more.

(h) "Municipality" means a city, township, or village.

(i) "Preconstruction activity" means any activity on a proposed route conducted before construction of a transmission line begins. Preconstruction activity includes surveys, measurements, examinations, soundings, borings, sample-taking, or other testing procedures, photography, appraisal, or tests of soil, groundwater, structures, or other materials in or on the real property for contamination. Preconstruction activity does not include an action that permanently or irreparably alters the real property on or across the proposed route.

(j) "Route" means real property on or across which a transmission line is constructed or proposed to be constructed.

(k) "Transmission line" means all structures, equipment, and real property necessary to transfer electricity at system bulk supply voltage of 100 kilovolts or more.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.563 Transmission as essential service; act as controlling.

Sec. 3. (1) Transmission of electricity is an essential service.

(2) This act shall control in any conflict between this act and any other law of this state.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.564 Construction plan.

Sec. 4. (1) If an electric utility that has 50,000 or more residential customers in this state, affiliated transmission company, or an independent transmission company plans to construct a major transmission line in this state in the 5 years after planning commences, the electric utility, affiliated transmission company, or independent transmission company shall submit a construction plan to the commission. An electric utility with fewer than 50,000 residential customers in this state may submit a plan under this section. A plan shall include all of the following:

(a) The general location and size of all major transmission lines to be constructed in the 5 years after planning commences.

(b) Copies of relevant bulk power transmission information filed by the electric utility, affiliated transmission company, or independent transmission company with any state or federal agency, national electric reliability coalition, or regional electric reliability coalition.

(c) Additional information required by commission rule or order that directly relates to the construction plan.

(2) At the same time the electric utility, affiliated transmission company, or independent transmission company submits a construction plan to the commission under subsection (1), the electric utility, affiliated transmission company, or independent transmission company shall provide a copy of the construction plan to each municipality in which construction of the planned major transmission line is intended.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.565 Transmission line; certificate required.

Sec. 5. An electric utility, affiliated transmission company, or independent transmission company shall not begin construction of a major transmission line for which a plan has been submitted under section 4 until the commission issues a certificate for that transmission line. Except as otherwise provided in section 9, a certificate of public convenience and necessity under this act is not required for constructing a new transmission line other than a major transmission line or for reconstructing, repairing, replacing, or improving an existing transmission line, including the addition of circuits to an existing transmission line.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.566 Public meeting as condition for certificate application.

Sec. 6. (1) Before applying for a certificate under section 5, an electric utility, affiliated transmission company, or independent transmission company shall schedule and hold a public meeting in each municipality through which a proposed major transmission line for which a plan has been submitted under section 4 would pass. A public meeting held in a township satisfies the requirement that a public meeting be held in each affected village located within the township.

(2) In the 60 days before a public meeting held under subsection (1), the electric utility, affiliated transmission company, or independent transmission company shall offer in writing to meet with the chief elected official of each affected municipality or his or her designee to discuss the utility's, affiliated transmission company's, or independent transmission company's desire to build the major transmission line and to explore the routes to be considered.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.567 Application for certificate for proposed major transmission line; withdrawal; contents.

Sec. 7. (1) An electric utility that has 50,000 or more residential customers in this state, an affiliated transmission company, or an independent transmission company shall apply to the commission for a certificate for a proposed major transmission line. An applicant may withdraw an application at any time.

(2) An application for a certificate shall contain all of the following:

(a) The planned date for beginning construction.

(b) A detailed description of the proposed major transmission line, its route, and its expected configuration and use.

(c) A description and evaluation of 1 or more alternate major transmission line routes and a statement of why the proposed route was selected.

(d) If a zoning ordinance prohibits or regulates the location or development of any portion of a proposed route, a description of the location and manner in which that zoning ordinance prohibits or regulates the location or construction of the proposed route.

(e) The estimated overall cost of the proposed major transmission line.

(f) Information supporting the need for the proposed major transmission line, including identification of known future wholesale users of the proposed major transmission line.

(g) Estimated quantifiable and nonquantifiable public benefits of the proposed major transmission line.

(h) Estimated private benefits of the proposed major transmission line to the applicant or any legal entity that is affiliated with the applicant.

(i) Information addressing potential effects of the proposed major transmission line on public health and safety.

(j) A summary of all comments received at each public meeting and the applicant's response to those comments.

(k) Information indicating that the proposed major transmission line will comply with all applicable state and federal environmental standards, laws, and rules.

(*l*) Other information reasonably required by the commission pursuant to rule.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.568 Public notice; publication; conduct of proceeding; fees; consultants; granting or denying application; criteria; identification of route and estimated cost; validity and duration of certificate.

Sec. 8. (1) Upon applying for a certificate, the electric utility, affiliated transmission company, or independent transmission company shall give public notice in the manner and form the commission prescribes of an opportunity to comment on the application. Notice shall be published in a newspaper of general circulation in the area to be affected within a reasonable time period after an application is provided to the commission and shall be sent to each affected municipality and each affected landowner on whose property a portion of the proposed major transmission line will be constructed. The notice shall be written in plain, nontechnical, and easily understood terms and shall contain a title that includes the name of the electric utility, affiliated transmission company, or independent transmission company and the words “NOTICE OF INTENT TO CONSTRUCT A MAJOR TRANSMISSION LINE”.

(2) The commission shall conduct a proceeding on the application as a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Upon receiving an application for a certificate, each affected municipality and each affected landowner shall be granted full intervenor status as of right in commission proceedings concerning the proposed major transmission lines.

(3) The commission may assess certificate application fees from the electric utility, affiliated transmission company, or independent transmission company to cover the commission's administrative costs in processing the application and may require the electric utility, affiliated transmission company, or independent transmission company to hire consultants chosen by the commission to assist the commission in evaluating those issues the application raises.

(4) The commission shall grant or deny the application for a certificate not later than 1 year after the application's filing date. If a party submits an alternative route for the proposed major transmission line, the commission shall grant the application for either the electric utility's, affiliated transmission company's, or independent transmission company's proposed route or 1 alternative route or shall deny the application. The commission may condition its approval upon the applicant taking additional action to assure the public convenience, health, and safety and reliability of the proposed major transmission line.

(5) The commission shall grant the application and issue a certificate if it determines all of the following:

(a) The quantifiable and nonquantifiable public benefits of the proposed major transmission line justify its construction.

(b) The proposed or alternative route is feasible and reasonable.

(c) The proposed major transmission line does not present an unreasonable threat to public health or safety.

(d) The applicant has accepted the conditions contained in a conditional grant.

(6) A certificate issued under this section shall identify the major transmission line's route and shall contain an estimated cost for the transmission line.

(7) If construction of a proposed major transmission line is not begun within 5 years of the date that a certificate is granted, the certificate is invalid and a new certificate shall be required for the proposed major transmission line.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.569 Certificate other than for major transmission line; provisions applicable to issuance; applicability of § 460.564.

Sec. 9. (1) An electric utility, affiliated transmission company, or independent transmission company may file an application with the commission for a certificate for a proposed transmission line other than a major transmission line. If an electric utility, affiliated transmission company, or independent transmission company applies for a certificate under this section, the electric utility, affiliated transmission company, or independent transmission company shall not begin construction of the proposed transmission line until the commission issues a certificate for that transmission line.

(2) The commission shall proceed on an application in the same manner as provided in section 8. Except as otherwise provided in subsection (3), the provisions of this act that apply to applications and certificates for major transmission lines apply in the same manner to applications and certificates issued under this section.

(3) Section 4 does not apply to a transmission line for which a certificate is sought under this section.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.570 Local ordinances or limitations in conflict with certificate; effect.

Sec. 10. (1) If the commission grants a certificate under this act, that certificate shall take precedence over a conflicting local ordinance, law, rule, regulation, policy, or practice that prohibits or regulates the location or construction of a transmission line for which the commission has issued a certificate.

(2) A zoning ordinance or limitation imposed after an electric utility, affiliated transmission company, or independent transmission company files for a certificate shall not limit or impair the transmission line's construction, operation, or maintenance.

(3) In an eminent domain or other related proceeding arising out of or related to a transmission line for which a certificate is issued, a certificate issued under this act is conclusive and binding as to the public convenience and necessity for that transmission line and its compatibility with the public health and safety or any zoning or land use requirements in effect when the application was filed.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.571 Limited license.

Sec. 11. In a civil action in the circuit court under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, the court may grant a limited license to an electric utility, affiliated transmission company, or independent transmission company for entry on land to conduct preconstruction activity related to a proposed major transmission line or a transmission line if the electric utility, affiliated transmission company, or independent transmission company has scheduled or held a public meeting in connection with a certificate sought under section 7 or 9 and if written notice of the intent to enter the land has been given to each affected landowner on whose property the electric utility, affiliated transmission company, or independent transmission company wishes to enter. The limited license may be granted upon such terms as justice and equity require. An electric utility, affiliated transmission company, or independent transmission company that obtains a limited license shall provide each affected land owner with a copy of the limited license. A limited license shall include a description of the purpose of entry, the scope of activities permitted, and the terms and conditions of entry with respect to the time, place, and manner of entry. The court shall not deny a limited license for entry to conduct preconstruction activity for any of the following reasons:

(a) A disagreement exists over the proposed route.

(b) The electric utility, affiliated transmission company, or independent transmission company has not yet applied for a certificate.

(c) The commission has not yet granted or denied the application.

(d) An alleged lack of public convenience or necessity.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.572 Costs to be included in rates.

Sec. 12. Reasonable and prudent costs for a transmission line for which a certificate is issued shall be included in an electric utility's rates. The commission shall not disallow costs the electric utility incurs in constructing a transmission line for which a certificate is issued, which costs do not exceed the amount set forth in the certificate unless the commission determines that the actual costs were imprudently and unreasonably incurred, based upon substantial evidence presented in opposition to the electric utility's rate request. Costs incurred by the electric utility that exceed the amount set forth in the certificate shall be included in the electric utility's rates, if reasonably and prudently incurred based upon substantial evidence presented in support of the electric utility's rate request.

History: 1995, Act 30, Imd. Eff. May 17, 1995.

460.573 Information as public record; disclosure of confidential information; waiver.

Sec. 13. (1) Except as otherwise provided in this section, information obtained by the commission under this act is a public record as provided in the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) An electric utility, affiliated transmission company, or independent transmission company may designate information received from a third party that the electric utility, affiliated transmission company, or independent transmission company submits to the commission in an application for a certificate or in other documents required by the commission for purposes of certification submitted to the commission as being only for the confidential use of the commission. The commission shall notify the electric utility, affiliated transmission company, or independent transmission company of a request for public records under section 5 of the freedom of information act, 1976 PA 442, MCL 15.235, if the scope of the request includes information designated as confidential. The electric utility, affiliated transmission company, or independent transmission company has 10 days after the receipt of the notice to demonstrate to the commission that the information designated as confidential should not be disclosed because the information is a trade secret or secret process or is production, commercial, or financial information the disclosure of which would jeopardize the competitive position of the electric utility, affiliated transmission company, or independent transmission company or the person from whom the information was obtained. The commission shall not grant the request for the information if the electric utility, affiliated transmission company, or independent transmission company demonstrates to the satisfaction of the commission that the information should not be disclosed for a reason authorized in this section. If the commission makes a decision to grant a request, the information requested shall not be released until 3 days have elapsed after notice of the decision is provided to the electric utility, affiliated transmission company, or independent transmission company.

(3) If any person uses information described in subsection (1) to forecast electrical demand, the person shall structure the forecast so the third party is not identified unless the third party waives confidentiality.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.574 Rules.

Sec. 14. (1) The commission may promulgate rules to implement this act pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. The rules may contain standards to determine a proposed major transmission line's health and safety aspects, including but not limited to standards for permissible additions to electric and magnetic fields produced by the transmission line.

(2) Until rules are promulgated pursuant to subsection (1), the commission shall consider and determine any health or safety issue a party raises in a proceeding concerning a certificate application.

History: 1995, Act 30, Imd. Eff. May 17, 1995.

460.575 Commission order; review; powers and duties.

Sec. 15. (1) A commission order relating to a certificate or other matter provided for under this act is subject to review as provided in section 26 of 1909 PA 300, MCL 462.26.

(2) In administering this act, the commission shall have only those powers and duties granted to the commission under this act.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

PUBLIC UTILITY FRANCHISE
Act 266 of 1909

AN ACT to authorize township boards to grant the right to use the highways, streets, alleys and other public places of any township for poles, wires, pipes or conduits, or tracks for railways, and to operate and maintain the same, and to authorize townships to grant public utility franchises, and to provide for the submission of such public utility franchise grants to the electors for confirmation.

History: 1909, Act 266, Eff. Sept. 1, 1909.

The People of the State of Michigan enact:

460.601 Franchise to use streets and public places; grant by township board.

Sec. 1. The township board of any township may grant to any person, partnership, association or corporation the right to use the highways, streets, alleys, and other public places of the township to set poles, string wires, lay pipes or conduits or to lay tracks for railways and to operate and maintain the same and the right to transact a local business in such township, subject to such reasonable regulations as said board shall prescribe from time to time.

History: 1909, Act 266, Eff. Sept. 1, 1909;—CL 1915, 4836;—CL 1929, 11103;—CL 1948, 460.601.

460.602 Franchise granted by township board; majority vote; designation as revocable or irrevocable; vote by electors.

Sec. 2. (1) A township may grant a franchise by a majority vote of the township board. The board shall designate a franchise granted under this act as either revocable or irrevocable.

(2) If the franchise is designated as irrevocable, approval of the franchise as irrevocable shall be submitted to a vote of the electors of the township at the next election.

(3) If the electors do not approve the irrevocability of the franchise, the franchise shall remain valid but continue as a revocable franchise.

History: 1909, Act 266, Eff. Sept. 1, 1909;—CL 1915, 4837;—CL 1929, 11104;—CL 1948, 460.602;—Am. 1996, Act 322, Imd. Eff. June 26, 1996.

460.603 Vote by electors to grant irrevocable trust; notice.

Sec. 3. At least 20 days before the next election, the township clerk shall give notice that the question of granting an irrevocable franchise will be submitted to a vote of the electors by posting a notice in 3 or more public places in the township.

History: 1909, Act 266, Eff. Sept. 1, 1909;—CL 1915, 4838;—CL 1929, 11105;—CL 1948, 460.603;—Am. 1996, Act 322, Imd. Eff. June 26, 1996.

460.603a Revocable franchise granted before effective date of act.

Sec. 3a. Unless revoked by the board or otherwise voted by the electors, a revocable franchise granted before the effective date of the amendatory act that added this section shall be a revocable franchise under this act subject to the terms and conditions of any existing agreements or contracts between the franchisee and the township.

History: Add. 1996, Act 322, Imd. Eff. June 26, 1996.

460.604, 460.605 Repealed. 1996, Act 322, Imd. Eff. June 26, 1996.

Compiler's note: The repealed sections pertained to confirmation of grant by electors.

GUARANTY DEPOSITS
Act 347 of 1921

AN ACT to allow public utilities to require a guaranty deposit; to require public utilities to pay interest on guaranty deposits; and to prescribe certain powers and duties of the Michigan public service commission.

History: 1921, Act 347, Eff. Aug. 18, 1921;—Am. 1988, Act 168, Imd. Eff. June 17, 1988.

The People of the State of Michigan enact:

460.651 Guaranty deposit; approval of terms and conditions.

Sec. 1. A public utility regulated by the Michigan public service commission may require a ratepayer to pay a deposit as a guaranty for the payment of the utility's services. In the absence of specific rules adopted by the commission, the terms and conditions for a guaranty deposit required by a utility must be approved by the commission.

History: 1921, Act 347, Eff. Aug. 18, 1921;—CL 1929, 11108;—CL 1948, 460.651;—Am. 1988, Act 168, Imd. Eff. June 17, 1988.

460.652 Rules.

Sec. 2. The Michigan public service commission may prescribe by rule all of the following:

(a) The circumstances under which a utility may require a guaranty deposit.

(b) The amount of the guaranty deposit.

(c) The interest rate payable on the guaranty deposit.

(d) The method by which the utility will pay interest on the guaranty deposit to the ratepayer.

(e) The circumstances under which the guaranty deposit must be returned to the ratepayer.

History: 1921, Act 347, Eff. Aug. 18, 1921;—CL 1929, 11109;—CL 1948, 460.652;—Am. 1988, Act 168, Imd. Eff. June 17, 1988.

PROTECTION OF UNDERGROUND FACILITIES
Act 53 of 1974

AN ACT to protect the public safety by providing for notices to public utilities by persons or public agencies engaged in certain construction related activities near underground facilities or demolishing buildings containing utility facilities; to provide for notices to affected parties when underground facilities are damaged; and to prescribe penalties.

History: 1974, Act 53, Eff. Apr. 1, 1975;—Am. 1975, Act 204, Imd. Eff. Aug. 20, 1975;—Am. 1989, Act 248, Imd. Eff. Dec. 21, 1989.

The People of the State of Michigan enact:

460.701 Definitions.

Sec. 1. As used in this act:

(a) "Association" means the MISS-DIG utilities communications programs.

(b) "Person" includes an individual, partnership, corporation, association, or any other legal entity. Person does not mean a public agency.

(c) "Public agency" means the state, a city, village, township, county, or any other governmental entity or municipality.

(d) "Public utility" means a natural gas company subject to the jurisdiction of the federal energy regulatory commission or an electric, steam, gas, telephone, power, water, or pipeline company subject to the jurisdiction of the public service commission pursuant to Act No. 3 of the Public Acts of 1939, as amended, being sections 460.1 to 460.8 of the Michigan Compiled Laws, Act No. 9 of the Public Acts of 1929, being sections 483.101 to 483.120 of the Michigan Compiled Laws, Act No. 16 of the Public Acts of 1929, being sections 483.1 to 483.11 of the Michigan Compiled Laws, Act No. 19 of the Public Acts of 1967, as amended, being sections 486.551 to 486.571 of the Michigan Compiled Laws, Act No. 165 of the Public Acts of 1969, being sections 483.151 to 483.162 of the Michigan Compiled Laws, or the Michigan telecommunications act, Act No. 179 of the Public Acts of 1991, being sections 484.2101 to 484.2605 of the Michigan Compiled Laws, a person or public agency owning or operating cable television facilities, and a public agency, other than the state transportation department, owning public service facilities for supplying water, light, heat, gas, power, telecommunications, sewage disposal, storm drains, or storm water drainage facilities.

History: 1974, Act 53, Eff. Apr. 1, 1975;—Am. 1975, Act 204, Imd. Eff. Aug. 20, 1975;—Am. 1989, Act 248, Imd. Eff. Dec. 21, 1989;—Am. 1992, Act 38, Imd. Eff. Apr. 21, 1992.

460.702 Exemptions.

Sec. 2. This act does not apply to a person or public agency using only nonpowered hand tools in performing excavating or tunneling operations described herein.

History: 1974, Act 53, Eff. Apr. 1, 1975.

460.703 Prerequisite to discharge of explosives, excavation, tunneling, or demolition.

Sec. 3. A person or public agency shall not discharge explosives, excavate, or tunnel in a street, highway, public place, a private easement of a public utility, or near the location of a public utility facility owned, maintained, or installed on a customer's premises, or demolish a building containing a public utility facility without having first ascertained in the manner prescribed in sections 5 or 7 the location of all underground facilities of a public utility in the proposed area of excavation, discharging of explosives, tunneling, or demolition.

History: 1974, Act 53, Eff. Apr. 1, 1975.

460.704 List required; filing; contents.

Sec. 4. A public utility having underground facilities in a county shall file with the clerk of the county a list containing the name of every city, village, township, and section within the township in the county in which it has underground facilities, the name of the public utility and the title and address of its representative designated to receive the written notice of intent required by section 5.

History: 1974, Act 53, Eff. Apr. 1, 1975.

460.705 Written or telephone notice of intent; time; contents.

Sec. 5. (1) Except as provided in sections 7 and 9, a person or public agency responsible for excavating or tunneling operations, drilling or boring procedures, or discharge of explosives in a street, highway, other public place, a private easement for a public utility, or near the location of utility facilities on a customer's

property, or demolition of a building containing a utility facility, shall give written or telephone notice to the association as required in section 7 of intent to excavate, tunnel, discharge explosives, or demolish at least 2 full working days, excluding Saturdays, Sundays, and holidays, but not more than 21 calendar days, before commencing the excavating, demolishing, discharging of explosives, tunneling operations, or drilling or boring procedures. Beginning on October 1, 1990, the notice required in this subsection shall be given at least 3 full working days, excluding Saturdays, Sundays, and holidays, but not more than 21 calendar days, before commencing the excavating, demolishing, discharging of explosives, tunneling operations, or drilling or boring procedures.

(2) The written or telephone notice of intent shall contain the name, address, and telephone number of the person or public agency filing the notice of intent, the name of the person or public agency performing the excavation, discharging of explosives, tunneling, or demolition, the date and type of excavating, discharging of explosives, demolishing, drilling or boring procedure, or tunneling operation to be conducted, and the location of the excavation, tunneling, discharging of explosives, drilling, boring, or demolition.

History: 1974, Act 53, Eff. Apr. 1, 1975;—Am. 1982, Act 228, Imd. Eff. Sept. 16, 1982;—Am. 1989, Act 248, Imd. Eff. Dec. 21, 1989.

460.706 Compliance as condition for permit.

Sec. 6. A public agency that pursuant to law requires a person to obtain a permit, shall require as a condition of the permit that the person shall comply with the requirement of this act.

History: 1974, Act 53, Eff. Apr. 1, 1975.

460.707 Association of public utilities having underground facilities; formation and operation; purpose; notification; services; costs; description of area served; list of members; record.

Sec. 7. (1) Public utilities having underground facilities shall form and operate an association providing for mutual receipt of notification of construction activities in those areas served by public utilities having underground facilities. Notification to the association formed and operated by the public utilities shall be considered to be notice to each public utility having underground facilities within the proposed areas of excavation, discharging of explosives, tunneling, demolition, drilling, or boring. Notification to the association shall be effected in writing as set forth in section 5 or by telephone call, providing the same information required by section 5, made by the person or public agency responsible for the excavating, demolishing, discharging of explosives, drilling or boring procedures, or tunneling operations. A public utility owned by a public agency shall participate in and receive the services furnished by the association and shall pay their share of the costs and services furnished, but shall not be required to become a member of the association. The association, whose members or participants have underground facilities within a county, shall file with the clerk of the county a description of the geographical area served by the association and list the name and address of every member and participating public utility.

(2) If notification is made by telephone an adequate record shall be maintained by the association to document compliance with the requirements of this act.

History: 1974, Act 53, Eff. Apr. 1, 1975;—Am. 1989, Act 248, Imd. Eff. Dec. 21, 1989.

460.708 Information as to approximate location of underground facilities; color coding; additional assistance; removal or protection of facilities.

Sec. 8. Not less than 1 working day in advance of proposed construction, unless otherwise agreed between the person or public agency performing the excavation, discharging of explosives, drilling, boring, tunneling, or demolition and the public utility, a public utility served with notice pursuant to section 5 or 7 shall inform the person or public agency of the approximate location of the underground facilities owned or operated by the public utility in the proposed area of excavation, discharging of explosives, drilling, boring, tunneling, or demolition, in a manner that enables the person or public agency to employ hand dug test holes or other similar means of establishing the precise location of the underground facilities using reasonable care to establish the precise location of the underground facilities in advance of construction. For the purposes of this act, the approximate location of underground facilities is defined as a strip of land at least 36 inches wide but not wider than the width of the facility plus 18 inches on either side of the facility. If the approximate location of an underground facility is marked with stakes or other physical means, the public utility shall follow the color coding prescribed in this section.

Utility and Type of Product	Specific Group Identifying Color
Electric power distribution and transmission	Safety red

Municipal electric systems	Safety red
Gas distribution and transmission	High visibility safety yellow
Oil distribution and transmission	High visibility safety yellow
Dangerous materials, product lines	High visibility safety yellow
Telephone and telegraph systems	Safety alert orange
Cable television	Safety alert orange
Police and fire communications	Safety alert orange
Water systems	Safety precaution blue
Sewer systems	Safety brown
Storm drains	Safety green
Land survey monumentation	High visibility safety pink

All safety alert orange markings shall include the name or type of the company who owns the underground facility to be marked. If the precise location of the underground facilities cannot be established, the person or public agency shall then notify the public utility, which shall no later than 1 working day after the notice provide such further assistance as may be needed to determine the precise location of the underground facilities in advance of the proposed excavating, tunneling, discharging of explosives, drilling or boring procedures, or demolition operations. Where demolition of a building is proposed and the public utility is notified, it shall be given reasonable time to remove or protect its facilities before demolition of the building.

History: 1974, Act 53, Eff. Apr. 1, 1975;—Am. 1975, Act 204, Imd. Eff. Aug. 20, 1975;—Am. 1989, Act 248, Imd. Eff. Dec. 21, 1989;—Am. 1994, Act 115, Imd. Eff. May 11, 1994.

460.709 Emergencies.

Sec. 9. (1) In case of emergency involving danger to life, health, or property or which requires immediate correction in order to continue the operation of a major industrial plant, or to assure the continuity of public utility service, excavation, maintenance, or repairs may be made without using explosives if notice and advice thereof, in writing or otherwise, are given to the public utility or association as soon as reasonably possible.

(2) In case of an emergency involving an immediate and substantial danger of death or serious personal injury, explosives may be discharged if notice and advice thereof, in writing or otherwise, are given to a public utility or an association at any time before the discharge is undertaken.

History: 1974, Act 53, Eff. Apr. 1, 1975.

460.710 Effect of permits; working agreements not precluded.

Sec. 10. This act shall not be construed to authorize, affect, or impair local ordinances, charters or other provisions of law requiring permits to be obtained before excavating or tunneling in a public street or highway or to construct or demolish buildings or other structures on private property nor construed to grant to any person or public agency any rights not specifically provided by this act. A permit issued by a public agency shall not be deemed to relieve a person from the responsibility for complying with the provisions of this act. The failure of any person, who has been granted a permit, to comply with the provision of this act shall not be deemed to impose any liability upon the public agency issuing the permit. This act shall not preclude establishment of working agreements between public utilities and contractor associations to accomplish the intent and purpose of this act.

History: 1974, Act 53, Eff. Apr. 1, 1975.

460.711 Reasonable care required; hand-digging.

Sec. 11. Upon receiving the information provided for in sections 5 or 7, a person or public agency excavating, tunneling, or discharging explosives shall exercise reasonable care when working in close proximity to the underground facilities of any public utility. If the facilities are to be exposed, or are likely to be exposed, only hand-digging shall be employed in such circumstances and such support, as may be reasonably necessary for protection of the facilities, shall be provided in and near the construction area.

History: 1974, Act 53, Eff. Apr. 1, 1975.

460.712 Damage to underground facilities; notice; evacuation.

Sec. 12. When any contact with or damage to any pipe, cable, or its protective coating or any other underground facility of a public utility occurs, the public utility shall be notified immediately by the person or public agency responsible for the operations causing the damage. Upon receiving the notice, the public utility shall dispatch personnel to the location as soon as possible to effect temporary or permanent repair of the damage. If a serious electrical short is occurring or if dangerous fluids or gases are escaping from a broken line, the person or public agency responsible for the operations causing the damage shall evacuate the

immediate area while awaiting the arrival of the public utility personnel.

History: 1974, Act 53, Eff. Apr. 1, 1975.

460.713 Civil remedies.

Sec. 13. This act does not affect any civil remedies for damage to public utility facilities and does not affect any civil remedies a person may have for actual damage to the person's property caused by a public utility's negligence in staking its facilities, except as otherwise specifically provided for in this act.

History: 1974, Act 53, Eff. Apr. 1, 1975;—Am. 1989, Act 248, Imd. Eff. Dec. 21, 1989.

460.714 Civil action; damage to underground facilities; liability.

Sec. 14. In a civil action in a court of this state, when it is shown by competent evidence that damage to the underground facilities of a public utility resulted from excavating, tunneling, drilling or boring procedures, or demolishing operations, or the discharge of explosives, as described in section 3, and that the person responsible for giving the notice of intent to excavate, tunnel, demolish, or discharge explosives failed to give the notice, or the person did not employ hand-digging or failed to provide support, the person shall be liable for the resulting damage to the underground facilities, but the liability for damages shall be reduced in proportion to the negligence of the public utility if it fails to comply with section 8.

History: 1974, Act 53, Eff. Apr. 1, 1975;—Am. 1989, Act 248, Imd. Eff. Dec. 21, 1989.

460.715 Injunction; penalties.

Sec. 15. A person who damages the facilities of a public utility on more than 3 occasions on any 1 construction contract location because of his or her failure to comply with any of the provisions of this act may be enjoined from engaging in any further excavating, demolition, discharging of explosives, drilling or boring procedures, or tunneling work within the state, except under such terms and conditions as the court may prescribe to insure the safety of the public. A court may prescribe such penalties as it considers necessary or appropriate for violation of the injunctive order up to a maximum of $5,000.00 per violation.

History: 1974, Act 53, Eff. Apr. 1, 1975;—Am. 1989, Act 248, Imd. Eff. Dec. 21, 1989.

460.716 Removal or destruction of stakes or other physical markings as misdemeanor; penalty.

Sec. 16. A person who willfully removes or otherwise destroys the stakes or other physical markings used by a public utility to mark the approximate location of underground facilities is guilty of a misdemeanor, and shall be fined not more than $5,000.00, for each offense or imprisoned for not more than 1 year, or both.

History: 1974, Act 53, Eff. Apr. 1, 1975;—Am. 1989, Act 248, Imd. Eff. Dec. 21, 1989.

460.717 Severability.

Sec. 17. If any provision of this act or the application thereof to any person or public agency or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or public agencies or circumstances shall not be affected thereby.

History: 1974, Act 53, Eff. Apr. 1, 1975;—Am. 1975, Act 204, Imd. Eff. Aug. 20, 1975.

460.718 Effective date.

Sec. 18. This act shall become effective August 1, 1974.

History: 1974, Act 53, Eff. Apr. 1, 1975.

MICHIGAN ENERGY EMPLOYMENT ACT OF 1976
Act 448 of 1976

AN ACT to prescribe the powers and duties of municipalities and governmental units to acquire, finance, maintain, and operate generating, transmission, and distribution facilities of electric power and energy, fuel and energy sources and reserves and all necessary related properties, equipment and facilities; to permit the exercise of those powers in joint venture or joint agency agreements; to provide for the issuance of bonds and notes; to prescribe the powers and duties of the municipal finance commission or its successor agency and of certain other state officers and agencies with respect to municipal electric utility financing; to create certain funds and prescribe their operation; to provide for tax exemptions and other exemptions; and to prescribe penalties and provide remedies.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 1983, Act 120, Imd. Eff. July 18, 1983;—Am. 1998, Act 193, Eff. Mar. 23, 1999.

The People of the State of Michigan enact:

ARTICLE 1
GENERAL ADMINISTRATIVE PROVISIONS

460.801 Short title.

Sec. 1. This act may be cited as the "Michigan energy employment act of 1976".

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.802 Meanings of words and phrases.

Sec. 2. For purposes of this act, the words and phrases defined in sections 3 to 6 shall have the meanings respectively ascribed to them in those sections.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.803 Definitions; E to J.

Sec. 3. (1) "Electric utility facility" means a facility which a municipality is authorized to acquire as part of a municipal electric utility system under this act or other law.

(2) "Governing body" means the council, commission, or board of trustees of a municipality, or when the charter of a municipality provides that a separate board has general management over the municipal electric utility system, "governing body" means that separate board, subject to review by the legislative body of the municipality as its charter may provide.

(3) "Governmental unit" means a municipality or a joint agency venture project.

(4) "Joint venture" means a project undertaken by 2 or more municipalities, or 1 or more municipalities in conjunction with 1 or more joint agencies, electric power cooperatives, publicly or privately owned utilities, authorities, or other public or private bodies, organized in accordance with article 2.

(5) "Joint agency" means a public body corporate and politic consisting of a combination of 2 or more municipalities, authorities, or other public bodies organized in accordance with article 3.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.804 Definitions; M.

Sec. 4. (1) "Municipal bond" means a bond or note or other evidence of indebtedness payable from ad valorem taxes which a governmental unit may issue.

(2) "Municipal electric utility system" means a system owned by a municipality or combination of municipalities to furnish heat, power, and light.

(3) "Municipality" means a city, county, incorporated village, township, or metropolitan district of this state, or a board, agency, or commission thereof, owning a system or facility for the generation, transmission, or distribution of electric power and energy for public or private use, or proposing to own such a system or facility.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.805 Definitions; P.

Sec. 5. (1) "Project" means a system or facility for the generation, transmission, or transformation of electricity by a municipal electric utility system by any means. Project also means stock, membership units, or any other interest in a multistate regional transmission system organization approved by the federal government and operating in this state or a transmission-owning entity which is a member of a multistate

regional transmission system organization approved by the federal government and operating in this state.

(2) "Project cost" includes, but is not limited to, the cost of acquisition, construction, improvement, or extension of a project, the cost of studies, plans, specifications, surveys, and estimates of related costs and revenues, the cost of land, land rights, rights of way, easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of any required applications, engineering and inspection expenses, financing costs, working capital, fuel costs, interest on bonds, establishment of reserves, and all other costs of the municipality or joint agency that are incidental, necessary, or convenient to the acquisition, construction, improvement, or extension of a project.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2002, Act 513, Imd. Eff. July 23, 2002.

460.806 Definitions; P to R.

Sec. 6. (1) "Power utility" means any of the following entities engaged in generating, transmitting, or distributing electricity: a political subdivision of this or another state or a Canadian province; an agency of this or another state, a federal agency, or a Canadian federal or provincial agency; or a cooperative or investor owned entity subject to the regulation of the Michigan public service commission or the equivalent regulatory agency of another state.

(2) "Power utility bond" means electric utility bonds, notes, or other evidences of indebtedness of a municipality, including refunding bonds issued to underwrite projects authorized by this act.

(3) "Revenues" means all fees, charges, moneys, profits, payment of principal of, or interest on, municipal or power utility bonds, or other gifts, grants, contributions and appropriations.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.807 Sources of electrical energy for distribution and sale; facilities for control, abatement, or prevention of pollution or damages to environment; facilities for safe disposal of waste or by-products.

Sec. 7. The governing body of a municipal electric utility system may purchase, acquire, construct, improve, enlarge, extend, or repair in the name of the municipality a source or sources of electrical energy for distribution and sale by the municipal electric utility system, whether the source is located within or without the state. A source may include, but not be limited to, facilities utilizing fossil fuels, garbage, trash, and other waste materials, nuclear fuels, water power (including pumped storage), solar energy, wind power, geothermal energy, energy derived from municipal waste of any kind, or other energy or fuel sources of whatever nature. The governing body may in relation to a source, purchase, acquire, construct, improve, enlarge, extend, or repair facilities for the control, abatement, or prevention of pollution or damage to the environment which might otherwise be caused by facilities for the generation of electric power, and may acquire facilities for the safe disposal of waste or by-products from the generation of electrical power.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.808 Fuel sources and reserves; facilities for transportation and storage.

Sec. 8. The governing body of a municipal electric utility system may purchase, acquire, construct, improve, enlarge, extend, or repair in the name of the municipality fuel sources and reserves it deems necessary to the continued efficient operation of the municipal electric utility system, together with the necessary facilities for transportation and storage. The fuel sources and reserves may include, but not be limited to, advance payments on contracts for nuclear fuels, and contracts for heat from facilities belonging to others. Facilities for transportation and storage of fuels shall include, but not be limited to, pipelines, conveyor systems, railroad cars, ships, storage tanks, underground storage areas, and other necessary and related appurtenances.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.809 Facilities for transmission of energy; contracts with other power utilities.

Sec. 9. The governing body of a municipal electric utility system may purchase, acquire, construct, improve, enlarge, extend, or repair facilities for the transmission of energy, and may contract for the purchase, sale, exchange, interchange, wheeling, pooling, or transmission of electrical energy with another power utility.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.810 Electric utility facilities; exercise of authority by governing body.

Sec. 10. The governing body of a municipal electric utility system may exercise its authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric utility facilities, individually, in joint

venture agreements authorized by article 2, or in joint agency agreements as authorized by article 3, or in other joint endeavors authorized by this act or other law, and in cooperation with 1 or more other power utilities, whether authorized by this act or other law.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.811 Joint venture, joint agency agreement, or other joint endeavor; percentage of common facility to be owned; defraying interest and other payments; operation and maintenance expenses.

Sec. 11. A municipality engaging in a joint venture, joint agency agreement, or other joint endeavor described in section 10 and authorized by article 2 or article 3 shall own a percentage of any common facility equal to the percentage of the money furnished or the value of the property supplied by the municipality for the acquisition and construction of the common facility. Each municipality in a joint endeavor shall defray its own interest and other payments required to be made in connection with a financing undertaken by it to pay its own percentage of the money furnished or the value of the property supplied by it for the planning, acquisition, and construction of a common facility, or an addition or betterment to the common facility. The agreement shall provide a uniform method of determining and allocating operation and maintenance expenses of the joint facility or agency.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.812 Financing cost of electric utility facility; bonds.

Sec. 12. A municipality may finance the cost of an electric utility facility, or its share of the cost of an electric utility facility acquired jointly pursuant to article 2 or article 3 or other law, by any lawful means available to the municipality, including the issuance of general obligation bonds pursuant to charter authority, the issuance of revenue bonds pursuant to Act No. 94 of the Public Acts of 1933, as amended, being sections 141.101 to 141.139 of the Michigan Compiled Laws, or the issuance of mortgage bonds pursuant to charter authority. An agreement for the joint acquisition of facilities entered into under this act shall be subject to provisions contained in this and other law relating to the issuance of bonds by the municipality. It is declared to be in the public interest and for a public purpose that power utilities be permitted to participate jointly in the development of electric facilities as provided in this act as a means of achieving economies of scale and promoting the economic development of the state; and to this end the issuance of revenue bonds is a public purpose. A municipality may pledge for the payment of the principal of, premium if any, and interest on the bonds, the revenues, or a portion thereof, derived or to be derived from the ownership and operation of the municipality's system or facilities for the generation, transmission, or distribution of electric power or energy, or its interest in a joint project or projects, except that the proceeds of the bonds issued for a joint project and the faith and credit of the municipality pledged for the bonds shall be dedicated exclusively to the acquisition of the municipality's undivided share of a joint project as specified in section 11.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.813 Exemption from taxation.

Sec. 13. To the extent of ownership by governmental units or joint agencies, projects undertaken pursuant to joint venture agreements authorized by article 2 or joint agency agreements authorized by article 3 of this act are exempt from assessment, collection, and levy of general or special taxes of the state or its political subdivisions. Income produced from municipal ownership in a joint venture or a joint agency shall be exempt from taxation by the state or its political subdivisions. A joint agency corporation formed under article 3 shall not be required to pay taxes upon its income, existence, or franchise. The bonds and notes issued by a municipality in a joint venture agreement or a joint agency corporation, their transfer and the income therefrom, including a profit made on the sale of the bonds or notes, shall be exempt from taxation within this state.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.814 License agreements.

Sec. 14. In connection with the ownership and operation of an electric utility facility, whether owned individually or jointly, the governing body of a municipal electric utility system may enter into the necessary license agreements with federal, state, or Canadian regulatory agencies, and comply with conditions imposed by the licensing agency, including, but not limited to, actions necessary to preserve and protect the environment, the acquisition of required public liability insurance, including waiver of defenses and payment of retrospective premiums, and other actions as may be necessary.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.815 Grants in aid and loans.

Sec. 15. The governing body of a municipality or the board of commissioners of a joint agency may make application and enter into contracts for, and accept grants in aid and loans from state and federal agencies and private and public organizations for any purpose authorized by this act. Pursuant to this authority, the governing body of a municipality or the board of commissioners of a joint agency may:

(a) Enter into and carry out contracts with the state or federal government or an agency or institution thereof under which the government, agency, or institution grants financial or other assistance to the municipality or joint agency.

(b) Accept assistance or funds granted or loaned by the state or federal government, with or without a contract.

(c) Agree to or comply with reasonable conditions which are imposed upon a grant or loan accepted under this section.

(d) Make expenditures from funds granted or loaned.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.816 Eminent domain.

Sec. 16. A municipality may take private property under Act No. 149 of the Public Acts of 1911, as amended, being sections 213.21 to 213.41 of the Michigan Compiled Laws, for the purposes defined in and authorized by this act, which taking and use shall be considered necessary for public purposes and for public benefit, except that a municipality shall not exercise its power of eminent domain to acquire an existing electrical generation or transmission facility or a part thereof held in private ownership, without first securing in writing the approval of the lawful private owner or owners. The acquired property may be conveyed for use in joint agency or joint venture projects authorized by this act in a manner and upon terms as the municipality deems appropriate.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

ARTICLE 2

460.821 Joint venture agreement; undivided interest as tenant in common; determination of future power requirements.

Sec. 21. (1) A governmental unit may join in a joint venture agreement to plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, better, own, operate, or maintain an undivided interest as a tenant in common in a project situated within or without the state with 1 or more municipalities, joint agencies, or power utilities; and make plans and enter into contracts in connection therewith, not inconsistent with this act, as are necessary or appropriate.

(2) Before entering a joint venture agreement, the governing body of a municipality shall determine the needs of the municipality for power and energy based on engineering studies and reports. In determining the future power requirements of a municipality, the following shall be considered:

(a) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation and transmission of electric power and energy.

(b) The municipality's need for reserve and peaking capacity, and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which it is or may become a party.

(c) The estimated useful life of the project.

(d) The estimated time necessary for the planning, development, acquisition, or construction of the project, and the length of time required in advance to obtain, acquire, or construct additional power supply.

(e) The reliability and availability of existing or alternative power supply sources, and the cost of those existing or alternative power supply sources.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.822 Joint venture agreement; proportion of undivided interest in project to be owned; percentage share of output and capacity; liability; restrictions as to money, property, or undivided share; acquisition of project; sources of money; providing property, services, and other considerations.

Sec. 22. Pursuant to a joint venture agreement, each governmental unit shall own an undivided interest in a project or projects in proportion to the amount of money furnished or the value of property or other consideration supplied by the governmental unit for the planning, development, acquisition, or construction of

the project, and each governmental unit shall be entitled to a percentage share of output and capacity from the project equal to its undivided interest. Each governmental unit shall be severally liable for its own acts, but shall not be jointly or severally liable for the acts, omissions or obligations of other governmental units or power utility party to the joint venture agreement, and money or property or other consideration supplied by the governmental unit shall not be credited or otherwise applied to the account of another governmental unit or power utility, nor shall the undivided share of a governmental unit in a project be charged directly or indirectly with a debt or obligation of another governmental unit or be subject to a lien as a result of a debt or obligation of another governmental unit or power utility. The acquisition of a project may include, but not limited to, the purchase or lease of an existing, completed project, or the purchase of a project under construction. A governmental unit participating in the joint planning, financing, construction, reconstruction, acquisition, improvement, enlargement, betterment, ownership, operation, or maintenance of a project under this act may furnish money derived from the proceeds of bonds, from the ownership and operation of its electrical system, or from any other source, and may provide property, both real and personal, services, and other considerations.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.823 Joint venture agreement; terms, conditions, and provisions; ratification of contracts by resolution; provisions of contract.

Sec. 23. A joint venture agreement entered into by governmental units with respect to joint ownership in a project shall contain those terms, conditions, and provisions, not inconsistent with this act, as the governing bodies of the governmental units determine to be in the interest of the governmental units. The contracts shall be ratified by resolution of the governing body of each governmental unit in the manner as may be prescribed by law or local charter. A contract shall include provisions relating to, but not limited to, the following:

(a) The purpose or purposes of the contract.

(b) The duration of the contract.

(c) The method of appointing or employing the personnel necessary in connection with the project.

(d) The method of financing the project, including the apportionment of costs and revenues.

(e) The ownership interests of the parties in property used or useful in connection with the project, and the procedures for disposition of that property when the contract expires or is terminated, or when the project is abandoned, decommissioned, or dismantled.

(f) The prohibition or restrictions of the alienation or partition of a governmental unit's undivided interest in a project, which provisions shall not be subject to a law restricting covenants against alienation or partition.

(g) The construction of a project, which may include the determination that a governmental unit jointly participating, or a person, firm, or corporation, may construct the project as agent for all parties to the joint venture agreement.

(h) The operation and maintenance of a project, which may include a determination that a governmental unit jointly participating, or that a person, firm, or corporation, may operate and maintain the project for all parties.

(i) Detailed project costs.

(j) The creation of a committee of representatives of the governmental units or power utility jointly participating, which committee shall have powers regarding the construction and operation of the project as the contract, not inconsistent with this act, may provide.

(k) If 1 or more of the governmental units defaults in the performance or discharge of its or their obligations with respect to the project, the other party or parties may assume, pro rata or otherwise, the obligations of the defaulting parties, and may succeed to the rights and interests of the defaulting party or parties in the project as may be agreed upon in the contract.

(*l*) Methods for amending the contract.

(m) Methods for terminating the contract.

(n) Any other necessary or proper matter.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.824 Sale or exchange of capacity or output; licenses, permits, certificates, or approvals; contracts for electric power and energy; authority, rights, privileges, and immunities of personnel; annual report; operating and financial statement; audit.

Sec. 24. (1) Capacity or output derived by a governmental unit from its ownership share of a project not then required by the governmental unit for its own use and for the use of its customers may be sold or exchanged by the governmental unit for a consideration and for a period and upon other terms and conditions as may be determined by the parties to the sale.

(2) Municipalities proposing to jointly plan, finance, develop, own and operate a project, may either jointly or separately apply to the appropriate agencies of the state, the federal government, another state, or another proper agency, for the necessary licenses, permits, certificates, or approvals; may construct, maintain, and operate the project in accordance with the licenses, permits, certificates, or approvals; and may obtain, hold, and use the licenses, permits, certificates, or approvals in the same manner as the operating unit of any other power utility.

(3) Municipalities participating in a joint project or projects may enter into contracts for the exchange, interchange, wheeling, pooling, or transmission of electric power and energy produced by the project or projects with a municipality of this state or another state owning electric distribution facilities, with an electric membership corporation, with a public utility, or with a state, federal, or municipal agency which owns electric generation, transmission, or distribution facilities in this state or another state.

(4) Personnel appointed by a municipality to work on a joint project shall have the same authority, rights, privileges, and immunities which the officers, agents, and employees of the appointing municipality enjoy within the jurisdictional boundaries of the municipality, whether within or without that territory, when the personnel are acting within the scope of their authority or within the course of their employment.

(5) Municipalities party to a joint project authorized by this article shall, following the end of each fiscal year, prepare an annual report of the activities of the project, including a complete operating and financial statement covering the operations of the project for that year. The municipalities shall cause an audit of the books of records and accounts of the project to be made not less than annually by a certified public accountant, and the cost of the audit may be treated as part of the cost of construction of the project, or as part of the expense of administering the project covered by the audit.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

ARTICLE 3

460.831 Joint agency; creation; purpose; determination of best interest.

Sec. 31. A joint agency is formed when the governing bodies of 2 or more municipalities by resolution determine that it is in the best interest of the municipalities engaged in generation, transmission or distribution of electricity as of the effective date of this act, in accomplishing the purposes of this act to create a joint agency for the purpose of undertaking the planning, financing, development, acquisition, construction, reconstruction, improvement, enlargement, betterment, operation, or maintenance of a project or projects to supply electric power and energy for their present or future needs as an alternative or supplemental method of obtaining the benefits and assuming the responsibilities of ownership in a project. In determining whether the creation of a joint agency for this purpose is in the best interest of a municipality, the governing body of each municipality shall consider, but shall not be limited to, the following:

(a) Whether a separate entity may be able to finance the cost of projects in a more economic and efficient manner.

(b) Whether financial market acceptance may be enhanced if 1 entity is responsible for issuing and selling all of the bonds required for a project or projects in a timely and orderly manner and with a uniform credit rating, instead of multiple entities marketing their separate issues of bonds.

(c) Whether savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, construction, ownership, and operation of a project or projects.

(d) Whether the existence of a separate entity will foster the continuation of joint planning and undertaking of projects, and the resulting economies and efficiencies to be realized from the joint planning and undertaking will serve the interests of the residents of the municipality. The determination made by the governing body of a municipality hereunder shall be conclusive.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.832 Board of commissioners; appointment and term of commissioners.

Sec. 32. The joint agency shall be governed by a board of commissioners appointed by the respective governing bodies of the municipalities which are members of the joint agency. The governing body of each member municipality shall, by resolution, appoint 1 commissioner who, at the discretion of the governing body, may be an officer or an employee of the municipality. Each commissioner shall serve at the pleasure of the governing body by which he was appointed.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.833 Board of commissioners; officers; record of proceedings; custody of records, documents, minutes, and seal; copies; certificate.

Sec. 33. The board of commissioners of a joint agency shall annually elect 1 of the commissioners as chairperson, another as vice-chairperson, and another person or persons, who may or may not be a commissioner, as treasurer, secretary, and if desired, assistant secretary. The office of treasurer may be held by the secretary or assistant secretary. The board of commissioners may appoint additional officers as it deems necessary. The secretary or assistant secretary of the joint agency shall keep a record of the proceedings of the joint agency, and the secretary shall be the custodian of all records, books, documents, and papers filed with the joint agency, the minutes or journal of the joint agency, and its official seal. Either the secretary or the assistant secretary of the joint agency may cause copies to be made of all minutes and other records and documents of the joint agency and may give certificates under the official seal of the joint agency to the effect that the copies are true copies, and all persons dealing with the joint agency may rely upon a certificate under the official seal of the joint agency.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.834 Joint agency as public body politic and corporate; essential public function; articles of incorporation; amendments.

Sec. 34. A joint agency formed for the purposes provided in this article is hereby made a public body politic and corporate and the powers conferred by this act shall be deemed and held to be the performance of an essential public function.

(1) Any combination of 2 or more municipalities described in section 31 may incorporate a joint agency by the adoption of articles of incorporation by resolution of the governing body of each municipality. The fact of adoption shall be endorsed on the articles of incorporation by the chief executive officer and clerk of the municipality, in form substantially as follows:

The foregoing articles of incorporation were
adopted by the _____, of the
_____, of _____ county,
Michigan, at a meeting duly held on the _____
day of _____, 19_____.

_____
_____ of said
_____
_____ of said
_____.

The articles of incorporation shall be published at least once in a newspaper or newspapers designated in the articles and generally circulating within the area of each municipality. One printed copy of the articles of incorporation, certified as a true copy by the person or persons designated in the articles, with the date and place of the publication, shall be filed with the county clerk or clerks of the county or counties in which the incorporating municipalities are located and the secretary of state. The incorporation of the joint agency shall become effective at the time provided in the articles of incorporation. The validity of the joint agency incorporation shall be conclusive unless questioned in a court of competent jurisdiction within 60 days after the filing of certified copies with the county clerk or clerks and the secretary of state.

(2) The articles of incorporation shall state the name of the joint agency, the names of the various incorporating municipalities, the purpose or purposes for which it is created, the powers, duties and limitations of the joint agency and its officers, the method of selecting its governing body, officers and employees, the person or persons who are charged with the responsibility for causing the articles of incorporation to be published and filed or who are charged with the responsibility in connection with the incorporation of the joint agency, the place of publication, and all other matters which the incorporating municipalities shall deem advisable, all of which shall be subject to the provisions of article 3 of this act and of the constitution and laws of the state.

(3) Any municipality described in section 31 which did not join in the original incorporation of a joint agency may become a constituent part thereof by amendment to the articles of incorporation adopted by the governing body of the municipality and by the governing body of each existing member municipality of which the joint agency is composed. Other amendments may be made to the articles of incorporation if adopted by the governing body of each municipality of which the joint agency is composed. An amendment shall be endorsed, published and certified and printed copies filed in the same manner as the original articles of incorporation, except that printed copies shall also be certified and filed by the recording officer of the joint agency.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.835 Board of commissioners; quorum; effect of vacancy; action authorized by resolution; expenses.

Sec. 35. A majority of the commissioners of a joint agency shall constitute a quorum for the transaction of business of the joint agency. A vacancy in the board of commissioners of the joint agency shall not impair the rights of a quorum to exercise all the rights and perform all the duties of the joint agency. Action taken by the joint agency under this article shall be authorized by resolution at any regular or special meeting, and each resolution shall take effect immediately. A vote of the majority of the commissioners on the board of commissioners shall be necessary to take action, or pass a resolution. A commissioner of a joint agency shall not receive compensation for the performance of his duties but may be reimbursed for actual and necessary expenses incurred while engaged in the performance of his duties.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.836 Other municipality as member of joint agency; application; resolution; withdrawal.

Sec. 36. After the creation of a joint agency, another municipality may become a member of the joint agency upon application to the joint agency after the adoption of a resolution of the governing body of the municipality as prescribed in section 31 of this article authorizing the municipality to participate, and with the unanimous consent of the members of the joint agency evidenced by the resolutions of each of their governing bodies. A municipality may withdraw from a joint agency, except that all contractual rights acquired and obligations incurred while a member municipality remain in full force and effect.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.837 Joint agency; rights and powers generally.

Sec. 37. A joint agency shall have the rights and powers necessary and convenient to carry out and effectuate the purposes and provisions of this article, including but not limited to the following:

(a) To adopt bylaws for the regulation of the affairs and conduct of its business, and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties.

(b) To adopt an official seal and alter the same at pleasure.

(c) To maintain an office at a place or places as it may determine.

(d) To sue and be sued in its own name, and to plead and be impleaded.

(e) To receive, administer, and comply with the conditions and requirements respecting a gift, grant, or donation of property or money.

(f) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, real or personal property, improved or unimproved, including less than a fee interest in land.

(g) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for those purposes with respect to, real or personal property or an interest therein.

(h) To pledge or assign money, rents, charges, or other revenues or the proceeds derived by the joint agency from the sales of real or personal property, insurance, or condemnation awards.

(i) To issue bonds of the joint agency for the purpose of providing funds for any of its corporate purposes.

(j) To study, plan, finance, construct, reconstruct, acquire, improve, enlarge, extend, better, own, operate, or maintain, 1 or more projects, and to pay all or a part of the costs of the projects from the proceeds of bonds of the joint agency or from other funds made available to the joint agency.

(k) To authorize the construction, operation, or maintenance of a project or projects by a person, firm, or corporation, including a political subdivision or agency of another state.

(*l*) To acquire by lease, purchase, or otherwise an existing project or a project under construction.

(m) To sell or otherwise dispose of a project or projects.

(n) To fix, charge, and collect rents, rates, fees, and charges for electric power or energy or other services, facilities, or commodities sold, furnished, or supplied through a project.

(o) To generate, produce, transmit, deliver, exchange, purchase or sell for resale only, electric power or energy, and to enter into contracts for those purposes.

(p) To negotiate and to enter into contracts for the purchase, sale, exchange, interchange, wheeling, pooling, transmission, or use of electric power and energy with a municipality in this state or another state or a Canadian province owning electric distribution facilities, and electric membership corporation, a public utility, or a state, federal, or municipal agency which owns electric generation, transmission, or distribution facilities in this state or another state.

(q) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this article, including contracts with persons, firms,

corporations, and others.

(r) To apply to the appropriate agencies of the state, the federal government, another state, or other proper agency for the necessary permits, licenses, certificates, or approvals, and to construct, maintain, and operate projects in accordance with the licenses, permits, certificates, or approvals, and to obtain, hold, and use the licenses, permits, certificates, and approvals in the same manner as another person or operating unit of another person.

(s) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors, and other consultants and employees as may be required in the judgment of the joint agency, and to fix and pay their compensation from funds available to the joint agency for that purpose.

(t) To do all acts and things necessary, convenient, or desirable to carry out the purposes, and to execute the powers granted to the joint agency under this act.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.838 Board of commissioners; retention of general manager of joint agency; policies; retention of independent certified public accounting firm; rules.

Sec. 38. Not more than 90 days after the initial election of officers of the board of commissioners of the joint agency, the board of commissioners shall:

(a) Retain a general manager of the joint agency, on either an acting or permanent basis.

(b) Establish broad policies covering all major operations of the joint agency.

(c) Retain an independent certified public accounting firm to provide annual financial audits.

(d) Adopt rules specifying quality control standards for contractual professional services in accordance with rules establishing those criteria promulgated by the department of licensing and regulation or a board or commission within that department.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.839 General manager as chief executive and operating officer of joint agency; powers and duties generally.

Sec. 39. (1) The general manager shall be the chief executive and operating officer of the joint agency. The general manager shall exercise the management of the properties and business of the joint agency and its employees. The general manager shall direct the enforcement of all resolutions, rules, and regulations of the board of commissioners, and shall enter into contracts as necessary under the general control and direction of the board of commissioners. The general manager shall serve at the pleasure of the board of commissioners.

(2) Subject to the approval of the board of commissioners, the general manager may appoint the officers, employees, and agents necessary to carry out the general purposes of the joint agency. If the joint agency operates a project described in section 5(1), the general manager shall classify all the offices, positions, and grades of regular employment required in the project.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.840 Determining future power requirements; considerations.

Sec. 40. Before undertaking a project for the construction or acquisition of facilities for the transmission or generation of electric power and energy, a joint agency shall, based upon engineering studies and reports meeting the standards required under section 38(d), determine that the project is required to provide for the projected needs for power and energy of its members from the date the project is estimated to be placed in normal and continuous operation and for a reasonable period of time thereafter. In determining the future power requirements of members of a joint agency, the joint agency shall consider all of the following:

(a) The economies and efficiencies to be achieved in constructing facilities for the generation and transmission of electric power and energy.

(b) The needs of the joint agency for reserve and peaking capacity, and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which the joint agency is or may become a party.

(c) The estimated useful life of the project.

(d) The estimated time necessary for the planning, development, acquisition, or construction of the project and the length of time required in advance to obtain, acquire, or construct additional power supply for members of the joint agency.

(e) The reliability and availability of existing alternative power supplies and the cost of those existing alternative power supplies.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2002, Act 533, Imd. Eff. July 25, 2002.

460.841 Tax levy prohibited; pledging credit or taxing power; financing projects of joint agencies.

Sec. 41. A joint agency may not levy taxes nor may it pledge the credit or taxing power of the state or a political subdivision, except for the pledging of receipts of taxes, special assessments, or charges collected by the state or a political subdivision and returnable and payable by law or by contract to the joint agency, and except for the pledge by a political subdivision of the state of its full faith and credit in support of its contractual obligations to the joint agency as authorized by law. Projects of joint agencies shall be financed, in addition to other methods of financing provided by law, as follows:

(a) By rents, rates, fees, and charges authorized pursuant to section 37(n).

(b) By other income or revenues from whatever source available, including contributions or appropriations of whatever nature, or other revenues of the member municipalities of the joint agency.

(c) By grants, loans, or contributions from federal, state, or other governmental units, and grants, contributions, gifts, bequests, or other devices from public or private sources.

(d) By the proceeds of taxes, special assessments, or charges imposed pursuant to law by member municipalities of the joint agency, then returned or paid to the joint agency pursuant to law or contract.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.842 Bonds; contractual obligations; resolution; bonds subject to revised municipal finance act; contracts or notes as to moneys advanced or property delivered; contracts pledging full faith and credit of municipality.

Sec. 42. (1) A joint agency may issue bonds to pay all or part of project costs of the joint agency. The bonds shall be payable from and may be issued in anticipation of payment of the proceeds of any of the methods of financing described in section 41 or elsewhere in this act or as may be provided by law. A member municipality of the joint agency may contract as provided in section 43 or may contract to make payments, appropriations, or contributions to the joint agency of the proceeds of taxes, special assessments, or charges imposed and collected by the member municipality or out of other funds legally available, and may pledge its full faith and credit in support of its contractual obligation to the joint agency. The contractual obligation shall not constitute an indebtedness of the municipality within a statutory or charter debt limitation. If the joint agency issues bonds in anticipation of payments, appropriations, or contributions to be made to the joint agency pursuant to contract by a political subdivision having the power to levy and collect ad valorem taxes, the political subdivision may obligate itself by the contract, and thereupon may levy a tax on all taxable property within the political subdivision, which tax as to rate or amount will not be subject to limitation, as provided in section 6 of article IX of the state constitution of 1963, for contract obligations in anticipation of which bonds are issued to provide sufficient money to fulfill its contractual obligation to the joint agency. The contract is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(2) The bonds may be:

(a) Issued for any period of years not exceeding 50.

(b) Issued for a consideration other than cash.

(c) For an amount that includes interest capitalized for a period of not more than 10 years after the date of the bonds.

(d) Secured by revenues, contract payments, funds or investments and securities as determined by the joint agency.

(3) The resolution authorizing bonds may provide for the appointment of 1 or more trustees for bondholders and a trustee may be an individual or corporation domiciled or located within or without this state and may be given appropriate powers whether with or without the execution of an indenture.

(4) Bonds issued by any joint agency under this act are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(5) A municipality or governmental unit may advance money or deliver property to the joint agency to enable it to carry out or finance any of its powers and duties. The joint agency may agree to repay an advance or pay for the property within a period of not more than 10 years, from the proceeds of its bonds or from other funds legally available for that purpose, with or without interest as may be agreed at the time of the advance or delivery. The obligation of the joint agency to make the repayment or payment may be evidenced by contract or note, which contract or note may pledge a source of payment determined by the joint agency.

(6) A municipality desiring to enter into a contract under this section pledging the full faith and credit of the municipality shall authorize, by resolution of its governing body, the execution of the contract. Subsequent to the adoption of the resolution a notice of the contract shall be published in a newspaper of general publication in the municipality, which notice shall state:

(a) That the governing body has adopted a resolution authorizing execution of the contract.

(b) The purpose of the contract.

(c) The source of payment of the municipality's contractual obligation.

(d) The right of referendum on the contract.

(e) Any other information that the governing body determines to be necessary to adequately inform all interested persons of the nature of the obligation.

(7) The contract may be executed and delivered by the municipality upon approval by its governing body without a vote of the electors, but the contract shall not become effective until the expiration of 45 days after the date of publication of the notice. If within the 45-day period a petition signed by at least 10% or 15,000, whichever is the lesser, of the registered electors residing within the limits of the municipality is filed with the clerk of the municipality requesting a referendum upon the contract, the contract shall not become effective until approved by the vote of a majority of the electors of the municipality qualified to vote and voting on the question at a general or special election, which election shall be held within 180 days after the filing of a petition. When a contract described in this section is to be entered into by any township only on behalf of the unincorporated area of the township, only the registered electors residing within the unincorporated area of the township shall be qualified to sign the petition and vote at the election.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 1983, Act 120, Imd. Eff. July 18, 1983;—Am. 2002, Act 358, Imd. Eff. May 23, 2002.

460.842a Violation of §§ 168.1 to 168.992 applicable to petitions; penalties.

Sec. 42a. A petition under section 42, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

History: Add. 1998, Act 193, Eff. Mar. 23, 1999.

460.843 Contract for purchase of capacity and output; payments; default; furnishing money, personnel, equipment, and property; advances or contributions; repayment.

Sec. 43. (1) A municipality which is a member of a joint agency may contract to buy power and energy from the joint agency required for the municipality's present or future requirements, including the capacity and output of 1 or more specified projects. The contract may provide that the member municipality shall be obligated to make the payments required by the contract whether or not a project is completed, operable, or operating, and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for, and that the payments under the contract shall not be subject to a reduction whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint agency or another member of the joint agency under the contract or other instrument. A contract with respect to the sale or purchase of capacity or output of a project entered into between a joint agency and its member municipalities may also provide that if 1 or more of the municipalities default in the payment of its or their obligations with respect to the purchase of the capacity or output, then the remaining member municipalities which are purchasing capacity and output under the contract are required to accept and pay for and shall be entitled proportionately to and may use or otherwise dispose of the capacity or output which was to be purchased by the defaulting municipality.

(2) Payments by a municipality under a contract for the purchase of capacity and output from a joint agency shall be made solely from the revenues derived from the ownership and operation of the electric system of the municipality, and an obligation under the contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon property of the municipality or upon the municipality's income, receipts, or revenues, except the revenues of its electric system. A municipality is obligated to fix, charge, and collect rents, rates, fees, and charges for electric power and energy and other services, facilities, and commodities, sold, furnished, or supplied through its electric systems sufficient to provide revenues adequate to meet its obligations under the contract, and to pay other amounts payable from or constituting a charge and lien upon those revenues, including amounts sufficient to pay the principal of and interest on general obligation bonds issued by the municipality for purposes related to its electric system.

(3) A municipality which is a member of a joint agency may furnish the joint agency with money derived solely from the ownership and operation of its electric system or facilities and provide the joint agency with personnel, equipment, and property, both real and personal. A member municipality may also provide services to a joint agency.

(4) A member municipality of a joint agency may contract for, advance, or contribute funds derived solely from ownership of its electric system or facilities to a joint agency as may be agreed upon by the joint agency and member municipality, and the joint agency shall repay the advance or contribution from the proceeds of bonds, from operating revenues, or from other funds of the joint agency, together with interest thereon as may be agreed upon by the member municipality and the joint agency.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.844 Sale or exchange of excess capacity or output.

Sec. 44. (1) A joint agency may sell or exchange the excess capacity or output of a project not required by any of its members for consideration upon terms and conditions as determined by the parties. The sale or exchange of excess capacity or output shall not be made with a municipality not engaged in the generating, transmitting, or distributing of electricity as of January 13, 1977, unless no other power utility is willing to enter into a sale or exchange upon equally favorable terms and conditions.

(2) A joint agency may do either or both of the following:

(a) Transfer all or part of its interest in transmission facilities to a multistate regional transmission system organization approved by the federal government and operating in this state or to 1 or more of its transmission-owning members.

(b) Purchase, acquire, sell, or otherwise transfer stock, membership units, or any other interest in a multistate regional transmission system organization approved by the federal government and operating in this state or in 1 or more of its transmission-owning members.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2002, Act 532, Imd. Eff. July 25, 2002.

460.845 Eminent domain.

Sec. 45. A joint agency may take private property under Act No. 149 of the Public Acts of 1911, as amended, or any other applicable law as determined necessary by a joint agency for carrying out its purpose, except that a joint agency shall not exercise its power of eminent domain to acquire an existing electrical generation or transmission facility or a part thereof held in private ownership, including, without limitation, nonprofit corporation, without first securing in writing the approval of the lawful private owner or owners.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.846 Dissolution of joint agency; resolution; vesting of title to funds and other properties.

Sec. 46. When the board of commissioners of a joint agency and the governing bodies of its member municipalities shall by resolution determine that the purposes for which the joint agency was formed have been substantially fulfilled and that bonds issued and other obligations incurred by the joint agency have been fully paid or satisfied, the board of commissioners and governing bodies may declare the joint agency to be dissolved. On the effective date of the resolution, the title to the funds and other properties owned by the joint agency at the time of the dissolution shall vest in the member municipalities of the joint agency as provided in this article and the bylaws of the joint agency, and in accordance with section 11 of this act.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.847 Annual report.

Sec. 47. A joint agency shall, following the close of each fiscal year, submit a report of its activities for the preceding year to the governing bodies of its member municipalities. The annual report shall set forth a complete operating and financial statement covering the operations of the joint agency during the preceding year, together with an audit of its operations as prescribed in section 48.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.848 Annual audit.

Sec. 48. The joint agency shall annually cause an audit of its books of records and accounts by a certified public accountant, and the cost of the audit may be treated as part of the cost of construction of a project or projects, or as part of the expense of administration of a project covered by the audit.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1986-4

460.901 Energy administration transferred from department of commerce to public service commission.

WHEREAS, Article V, Section 2, of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the Executive Branch or assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, efficient use and adequate supplies of competitively priced energy are vital to the maintenance and growth of Michigan's economy; and

WHEREAS, the state's ability to coordinate strategic energy planning, policy and program development and evaluation must be strengthened to assure that sufficient energy resources are available to Michigan's citizens and businesses at competitive prices; and

WHEREAS, the current functions and responsibilities of the Energy Administration include coordination of non-regulatory state governmental actions relating to energy problems and planning; gathering and analysis of information on energy issues, including Michigan's policy and planning alternatives; development and implementation of statewide energy conservation programs, including the collection of reports from local units of government and school districts; provision of public information on the state's energy situation and energy conservation programs; liaison for the state with the federal government, other states, and local units of government on energy matters, including development and submission of plans for the disbursement of oil overcharge refunds; and provision of assistance to the Executive Office with energy policy and planning matters, as well as with the preparation of energy conservation plans; and

WHEREAS, the current functions and responsibilities of the Public Service Commission include broad supervision and regulation of all rates, services, rules, conditions of service, and other matters relating to the operations of public utilities providing services in Michigan; and

WHEREAS, the organizational merger of the Energy Administration and the Public Service Commission will significantly strengthen the regulatory and non-regulatory energy planning, policy and program capabilities of the State of Michigan and improve the administrative coordination and efficiency with which the state's energy-related programs are conducted;

NOW, THEREFORE, I, JAMES J. BLANCHARD, Governor of the State of Michigan, pursuant to the authority vested in me by the provisions of Article V, Section 2, of the Constitution of the State of Michigan of 1963, do hereby order that:

1. All functions and responsibilities of the Energy Administration, Department of Commerce, noted above and all of its authority, powers, duties, functions and responsibilities created by and described in Executive Directives dated March 29, 1976 (1976-2), September 22, 1976 (1976-5), November 1, 1982 and March 8, 1984 are hereby transferred to the Michigan Public Service Commission, a Type I agency of the Department of Commerce.

2. Further, all functions and responsibilities of the Energy Administration conferred by Act No. 191 of the Public Acts of 1982, being Sections 10.81 through 10.89 of the Michigan Compiled Laws; Act No. 190 of the Public Acts of 1983, being Section 206.262 of the Michigan Compiled Laws; Act Nos. 148, 400, 401, 402, 403 and 404 of the Public Acts of 1984, being Sections 389.122A, 46.11c, 117.56, 68.36, 41.75 and 78.24b of the Michigan Compiled Laws; and Act No. 22 of the Public Acts of 1985, being Section 380.1274a of the Michigan Compiled Laws, are hereby transferred to the Michigan Public Service Commission, a Type I agency of the Department of Commerce, and those powers, duties and responsibilities of the Director of the Energy Administration associated with the Director's designation as a member of the Energy Advisory Committee pursuant to Section 2 of Act No. 191 of the Public Acts of 1982, being Section 10.82 of the Michigan Compiled Laws, shall become the powers, duties and responsibilities of the Chairperson of the Michigan Public Service Commission. The Chairperson of the Michigan Public Service Commission is hereby designated as Chairperson of the Energy Advisory Committee pursuant to Section 2 of Act No. 191 of the Public Acts of 1982, being Section 10.82 of the Michigan Compiled Laws. The Chairperson of the Michigan Public Service Commission shall have only one vote on the Energy Advisory Committee.

3. The Public Service Commission shall make the internal organizational changes necessary to implement a strengthened regulatory and non-regulatory strategic energy planning, policy and program development and evaluation capability, and to improve the administrative efficiency and coordination of the state's energy-related program activities. Motor carrier fees or public utility assessments shall not be used by the Michigan Public Service Commission to carry out the powers, duties and responsibilities transferred herein. The appropriations made in Act No. 218 of the Public Acts of 1986 to the Michigan Public Service

Commission for the state fiscal year ending September 30, 1987 shall be expended for Michigan Public Service Commission purposes and not for carrying out the powers, duties and responsibilities of the Energy Administration transferred herein.

4. All records, property, personnel and unexpended balances of appropriations, allocations and other funds used, held, employed, available, or to be made available to the Energy Administration or necessary for any of the functions transferred herein are also transferred to the Michigan Public Service Commission. The appropriations made in Act 218 of the Public Acts of 1986 for Energy Administration purposes for the state fiscal year ending September 30, 1987 shall be expended for carrying out the powers, duties and responsibilities of the Energy Administration transferred herein. No transfers shall be made within the appropriations for Energy Administration purposes for the state fiscal year ending September 30, 1987 without complying with Section 393 of Act 431 of the Public Acts of 1984, being Section 18.1393 of the Michigan Compiled Laws.

5. All state agencies shall cooperate with the Michigan Public Service Commission in the performance of its functions and responsibilities described herein.

In fulfillment of the requirements of Article V, Section 2, of the Constitution of 1963, this Order shall become effective January 1, 1987.

History: 1986, E.R.O. No. 1986-4, Eff. Jan. 1, 1987.

Compiler's note: In paragraph no. 2 of E.R.O. No. 1986-4, the reference to “117.56” evidently should read “117.5f”.